(19,560.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 460.

HIRAM REMINGTON, PLAINTIFF IN ERROR,

vs.

CENTRAL PACIFIC RAILROAD COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF NEW YORK.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the northern district of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court of the United States for the northern district of New York, before you, or some of you, between Hiram Remington, plaintiff in error, and Central Pacific Railroad Company, defendant in error, wherein the jurisdiction of the court was and is in issue, a manifest error hath happened to the great damage of said Hiram Remington, as by his complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in said Supreme Court at Washington, on the 15th day of December, 1904, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States this 18th day of November in the year of our Lord one thousand nine hundred and four and of the Independence of the United States the one hundred and twenty-ninth.

[Seal of the U. S. Circuit Court, Northern District N. Y.]

W. S. DOOLITTLE,
Clerk of the Circuit Court of the United States
for the Northern District of New York.

1½ [Endorsed:] Supreme Court of the United States Law 3441 Hiram Remington, pl'ff in error, *vs.* Central Pacific Railroad Company, def't in error. Writ of error. Brown, Carlisle & Hugo, att'ys for plaintiff in error, # 8 Stone street, Watertown, N. Y. U. S. circuit court, N. D. of N. Y. Filed Nov. 18, 1904 W. S. Doolittle, clerk. D. C. N.

Received a true copy of the within writ of error for defendant in error. Dated this 18th day of November, 1904.

W. S. DOOLITTLE,
Clerk of the Circuit Court of the U. S.
for the Northern District of New York.

2 Supreme Court of the State of New York, County of Jefferson.

HIRAM REMINGTON, Plaintiff,
against
CENTRAL PACIFIC RAILROAD COMPANY, Defendant.

To the honorable the supreme court of the State of New York:

The petition of the Central Pacific Railroad Company, appearing specially and for the sole and single purpose of presenting this petition respectfully showeth:

That heretofore and on or about the 10th day of April, 1903, the above entitled suit which is a suit of civil nature was brought in this court by Hiram Remington against your petitioner as defendant. That your petitioner, at the time of the commencement of said suit, was and has ever since been and still is a foreign corporation organized and created under the laws of the State of California, and at all such times was and still is a citizen and resident of the State of California and a non-resident of the State of New York.

That the plaintiff, at the time of the commencement of said suit, was and has ever since been and still is a citizen and resident of the State of New York.

That said suit is a suit of a civil nature in which there is a controversy between citizens of different States and that the matter in dispute in such suit exceeds, exclusive of interest and costs, the sum of $2,000.

That said suit is pending undetermined in this court; and that the time has not yet arrived at which the defendant is required by the laws of the State of New York, or the rules of the supreme court of the State of New York, in which such suit is brought,
3 to answer or plead to the declaration or complaint of the plaintiff, and that no application has been made to any court or judge for the order to be applied for upon this petition.

Wherefore your petitioner prays for the removal of said suit into the circuit court of the United States, to be held in the district where such suit is pending, viz.: the circuit court of the United States in and for the northern district of New York, and makes and files with this petition a bond with good and sufficient surety for its entering in such circuit court on the first day of its next session, a copy of the record in such suit and for paying all costs that may be awarded by the said circuit court, if said court shall hold that such suit was wrongfully or improperly removed thereto, and also for its appearing and entering special bail in such suit, if special bail was originally requisite therein, and your petitioner will ever pray, etc.

CENTRAL PACIFIC RAILROAD COMPANY, *Defendant.*
PURCELL, WALKER & BURNS,
Attorneys for Defendant, 15 *Washington St.,*
Watertown, N. Y.

STATE OF NEW YORK, } ss:
Jefferson County, }

Henry Purcell, being duly sworn, on oath says that he is one of the attorneys for the defendant in the above entitled cause and of the petitioner named in the foregoing petition; that he has read the same and knows the contents thereof, and the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

And affiant further says that the said petitioner is absent from and is a non-resident of the county of Jefferson, State of New York, in which said suit is brought, and that affiant makes this affidavit for the reason that the defendant is absent from and is a non-resident of the said county of Jefferson, in which said suit is brought, and none of its officers are within the said county.

HENRY PURCELL.

Sworn to before me this 26th day of October, 1903.

WATSON M. ROGERS, *J. S. C.*

[Endorsed:] Read on application, Oct. 26, 1903. W. M. R., J. S. C.

4 Supreme Court of the State of New York, County of Jefferson.

HIRAM REMINGTON, Plaintiff,
against
CENTRAL PACIFIC RAILROAD COMPANY, Defendant. }

Know all men by these presents: That the Fidelity and Deposit Company of Maryland, a corporation duly authorized and existing under the laws of the State of Maryland, having an office at No. 35 Wall street, New York city, and having authority to transact business, pursuant to the act of Congress, August 13th, 1894, entitled, "An act relative to the cognizances, stipulations, bonds and undertakings, and to allow certain corporations to be accepted as surety thereon," is held and firmly bound unto Hiram Remington, in the sum of five hundred dollars ($500.00), for the payment of which well and truly to be made unto the said Hiram Remington, his heirs, executors, administrators and assigns, the said Fidelity and Deposit Company of Maryland binds itself, its successors and assigns, jointly and firmly by these presents; upon condition nevertheless, that

Whereas, the above named Hiram Remington has heretofore brought a suit of a civil nature in the supreme court of the State of New York, in and for the county of Jefferson, against the said Central Pacific Railroad Company, and

Whereas, the said Central Pacific Railroad Company simultaneously with the filing of this bond intends to file its petition in the said suit in such State court for the removal of such suit into the circuit court of the United States in the district where such
5 suit is pending, to-wit: the circuit court of the United States in and for the northern district of New York, according to the provisions of the act of Congress in such case made and provided.

Now, therefore, the condition of this obligation is such that if the said petitioner, The Central Pacific Railroad Company, shall enter in the circuit court of the United States for the northern district of New York on the first day of its next session a copy of the record in such suit and shall well and truly pay all costs that may be awarded by the said circuit court if said court shall hold that such suit was wrongfully or improperly removed thereto and shall also appear and enter special bail in such suit if special bail was originally requisite therein, then the above obligation shall be void but shall otherwise remain in full force and virtue.

In witness whereof, the said Fidelity and Deposit Company of Maryland has caused these presents to be signed by its vice-president and attested by its attorney-in-fact and its corporate seal to be hereunto affixed this 22nd day of October, in the year nineteen hundred and three.

FIDELITY & DEPOSIT COMPANY
OF MARYLAND,
By HENRY B. PLATT, *Vice-President.*
Attest: JAMES R. KINGSLEY,
Attorney-in-fact.

6 STATE OF NEW YORK, } ss:
County of New York, }

On the 22nd day of October, in the year 1903 before me personally came Henry B. Platt, to me known, who, being by me duly sworn, did depose and say, that he resided in the city of New York; that he was the vice-president of the Fidelity and Deposit Company of Maryland, the corporation described in, and which executed the within instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order; and that the liabilities of said company do not exceed its assets as ascertained in the manner provided in section 3, of chapter 720, of the Session Laws of the State of New York for the year 1893. And the said Henry B. Platt further said that he was acquainted with James R. Kingsley, and knew him to be the attorney-in-fact of said company; that the signature of the said James R. Kingsley, subscribed to the within instrument, was in the genuine handwriting of the said James R. Kingsley, and was subscribed thereto by like order of the

board of directors, and in the presence of him the said Henry B. Platt.

JAMES T. CRANE,
Notary Public, New York County.

At a regular and lawful meeting of the board of directors of the Fidelity and Deposit Company of Maryland, at which a quorum was present, held at the office of the company, in the city of Baltimore, State of Maryland, on the sixth day of March, 1901, on motion, it was unanimously

"Resolved, That in pursuance of section eight hundred and eleven "of the Code of Civil Procedure of the State of New York, Henry B. "Platt, vice-president, or George Sewell Bonner, attorney, or Frank "H. Platt, Edward T. Platt, Joseph A. Flynn, Hugh M. Allwood "and James R. Kingsley, attorneys-in-fact of this company, in the "State of New York, be, and each of them is, hereby authorized and "empowered to sign, execute and deliver any and all bonds or "undertakings for or on behalf of this company, and to attach "thereto the seal of the corporation, the same to be attested by the "said George Sewell Bonner, attorney of the company, or by
7 "either one of the other persons above named, as occasion "may require."

COUNTY OF NEW YORK, ss:

I, James R. Kingsley, attorney-in-fact, of the Fidelity and Deposit Company of Maryland, have compared the foregoing resolution with the original thereof, as recorded in the minute book of said company, and do hereby certify that the same is a true and correct transcript therefrom, and of the whole of the said original resolution.

Given under my hand and the seal of the company, at the city of New York, this 22nd day of October, 1903.

JAMES R. KINGSLEY,
Attorney-in-fact.

Fidelity and Deposit Company of Maryland.

Statement, December 31st, 1902.

Resources.		Liabilities.	
Real estate	$670,000.00	Capital stock	$2,000,000.00
Stocks and bonds	2,723,100.00	Surplus and undivided profits	2,876,233.57
Railroad bonds	2,059,600.00	Premium reserve	717,297.87
Net premiums due	102,807.25	Claims in process of adjustment	31,012.45
Cash in bank, etc	235,058.63	Claims reported	166,021.99
	$5,790,565.88		$5,790,565.88

STATE OF NEW YORK, }
County of New York, } ss:

James R. Kingsley, being duly sworn, says that he is the attorney-in-fact of the Fidelity and Deposit Company of Maryland; that the foregoing is a true and correct statement of the financial condition of said company, as of December 31st, 1902, to the best of his knowledge and belief, and that the financial condition of said company is as favorable now as it was when such statement was made.

JAMES R. KINGSLEY.

Subscribed and sworn to before me, this 22nd day of October, 1903.

JAMES T. CRANE,
Notary Public, New York County.

8 STATE OF NEW YORK, }
County of New York, } ss:

I, Thomas L. Hamilton, clerk of the county of New York, and also clerk of the supreme court for the said county, the same being a court of record, do hereby certify, that James T. Crane, whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such proof or acknowledgment, a notary public in and for the county of New York, dwelling in the said county, commissioned and sworn, and duly authorizad to take the same. And further that I am well acquainted with the handwriting of such notary and verily believe that the signature to the said certificate of proof or acknowledgment is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court and county, the 22nd day of Oct., 1903.

[SEAL.] THOS. L. HAMILTON, *Clerk.*

(Endorsed:) New York supreme court, Jefferson county. Hiram Remington, plaintiff against Central Pacific Railroad Co., defendant. Bond. I hereby approve of the within bond as to form and sufficiency of surety. Dated Oct. 26, 1903. Watson M. Rogers, J. S. C. Fidelity and Deposit Company of Maryland 35 Wall street, New York.

9 STATE OF NEW YORK:

Supreme Court, County of Jefferson.

HIRAM REMINGTON, Plaintiff,
vs.
CENTRAL PACIFIC RAILROAD COMPANY, Defendant. }

On reading the affidavits of Hirman Remington, Frederick H. Remington and John N. Carlisle and certified copies of affidavits of

Ellis L. Aldrich and Andrew Hunter hereto annexed and on the application of the plaintiff, who desires to have the examination and deposition of himself taken in this action before the trial thereof, and it appearing that there are sufficient grounds therefor, and on motion of Brown, Carlisle & Hugo, attorneys for said plaintiff,

It is hereby ordered that the plaintiff Hiram Remington do appear before Mason M. Swan, Esq., an attorney and counsellor at law of the city of Watertown, New York, who is hereby appointed referee for the purpose of taking the examination of said Hirman Remington, at the residence of plaintiff Hiram Remington, No. 28 State street, at the southeast corner of State street and Park street, in the city of Watertown, Jefferson county, New York, on the 2nd day of November, 1903, at 10 o'clock in the forenoon of said day, for the purpose of being examined pursuant to the provisions of article I, title 3, chapter 9 of the Code of Civil Procedure.

It is further ordered that a copy of this order and of said affidavits be served upon the above-named defendant as follows: By service of a copy of said order and affidavits personally upon Purcell,
10 Walker & Burns, attorneys for the defendant, on or before the 27th day of October, 1903, and by depositing a copy of said order and affidavits properly enclosed in a postpaid wrapper, in the post office at Watertown, New York, or in any post office box regularly maintained by the Government of the United States and under the care of the post office at Watertown, New York, directed to the Central Pacific Railroad Company, at 120 Broadway, city of New York, New York, on or before the 22nd day of October, 1903, and also by depositing another copy of said order and affidavits, properly enclosed in a postpaid wrapper, in the post office at Watertown, New York, or in any post office box regularly maintained by the Government of the United States, and under the care of the post office at Watertown, N. Y., directed to the Central Pacific Railroad Company at No. 4 Montgomery street, San Francisco, California, on the 19th day of October, 1903.

Dated at the city of Watertown, N. Y. this 19th day of October, 1903.

(Signed) E. C. EMERSON,
Jeff. Co. Judge.

11 In Supreme Court, Jefferson County.

HIRAM REMINGTON
vs.
CENTRAL PACIFIC RAILROAD COMPANY.

STATE OF NEW YORK, *Jefferson County,* } ss:

John N. Carlisle being duly sworn says he is one of the attorneys for the plaintiff in the above entitled action; that said action was

commenced by the service of a summons upon J. C. Stubbs, a director of the defendant on the 10th day of April, 1903; that defendant has appeared specially by Purcell, Walker & Burns, attorneys at law, residing and having an office in the city of Watertown, N. Y. and made a motion to set aside the service of the summons; that said motion was denied, and the said defendant has served notice of appeal from said order denying said motion to the appellate division, fourth department, which notice of appeal was served October 15, 1903.

Deponent further says that no previous application for an order to examine the plaintiff herein has been made.

JOHN N. CARLISLE.

Sworn to before me this 17th day of October, 1903.

MASON N. SWAN,
Notary Public.

12 STATE OF NEW YORK:

Supreme Court, County of Jefferson.

HIRAM REMINGTON, Plaintiff,
vs.
CENTRAL PACIFIC RAILROAD COMPANY, Defendant.

STATE OF NEW YORK, *Jefferson County,* } ss:

Hiram Remington, being duly sworn, on oath, deposes and says that he is the plaintiff in the above entitled action and that his place of residence is number 28 State street at the southeast corner of Park street and State street in the city of Watertown, Jefferson county, State of New York. That the above entitled action was commenced on the 10th day of April, 1903, by the above named plaintiff against the above named defendant Central Pacific Railroad Company by the service of the summons in said action upon the said defendant, and is now pending. That the defendant Central Pacific Railroad Company is, and at all times hereinafter mentioned was, a foreign railroad corporation duly created, organized and existing under and by virtue of the laws of the State of California, and owned and operated certain railroads. That the principal office of the said defendant Central Pacific Railroad Company is kept by the defendant at number 4 Montgomery street in the Southern Pacific building in the city of San Francisco, State of California. That said defendant Central Pacific Railroad Company also keeps
13 an office at number 120 Broadway, in the city of New York, in the State of New York, which office is also occupied by the Southern Pacific Company, a Kentucky corporation, Central Pacific Railway Company, a railroad corpora-

tion duly created, organized and existing under and by virtue of the laws of the State of Utah, and certain other railroad corporations whose roads have been leased or are controlled by the said Southern Pacific Company. That the said Central Pacific Railroad Company leased its various railroads to the said Southern Pacific Company and thereafter sold and conveyed said railroads to the said Central Pacific Railroad Company, and all of said companies have their offices in the city of New York at the same place. That the residence of said defendant Central Pacific Railroad Company is in the city of San Francisco, State of California. That the plaintiff has appeared in this action by Brown, Carlisle & Hugo, his attorneys, all of whom reside at the city of Watertown, New York, and whose office address is at number 8 Stone street in the city of Watertown, New York. That the defendant Central Pacific Railroad Company has not appeared in this action except as hereinafter stated.

That on the 11th day of May, 1903, Purcell, Walker & Burns, attorneys for the defendant, served a special notice of appearance in said action upon the plaintiff's said attorneys, of which Exhibit "A" hereto attached is a copy, which Exhibit "A" is made a part of this affidavit.

That on said 11th day of May, 1903, said Purcell, Walker & Burns, attorneys for the defendant, served a notice of motion
14 in said action upon the plaintiff's said attorneys of which Exhibit "B" hereto attached is a copy and is made a part of this affidavit.

That affiant is in doubt whether the fact that in said notice of motion the defendant moved "for such other or further order as may be proper" makes a general appearance in the action on the part of said defendant and for that reason attaches said notice of motion to this affidavit.

That said Purcell, Walker & Burns, defendant's attorneys, all reside at the city of Watertown, Jefferson county, New York, and their office address is number 15 Washington street, Watertown, New York.

That the complaint in said action has been prepared and verified by the plaintiff but has not been served upon the defendant or its attorneys for the reason that no demand for said complaint has been made by or on behalf of said defendant. That no answer has been served in said action.

That the nature of said action and the substance of said plaintiff's cause of action are as follows: That this action is brought for the purpose of recovering damages from the defendant Central Pacific Railroad Company amounting to $414,492.64 and interest thereon from the 10th day of April, 1903, besides the costs and disbursements of this action, which damages arise out of the following facts. That the said Central Pacific Railroad Company issued illegal and void certificates of the capital stock of said Central Pacific Railroad Company and made and caused to be published false and fraudulent representations concerning the capital stock represented by said certificates concern-

ing the affairs and financial condition of said Central Pacific Railroad Company, and concerning the consideration paid to said company for said stock, for the purpose of giving said capital stock represented by said certificates a fictitious value upon the market and for the
15 purpose of inducing the public to purchase said stock represented by said certificates, and issued said illegal, fraudulent and void certificates of stock in the city of New York, and published said false and fraudulent representations in the said city of New York. That the said illegal issue of certificates of capital stock amounted to $54,275,500. or thereabouts, for which the defendant received no consideration whatever. That the defendant, with the purpose and intent of deceiving the public and purchasers of said stock, concealed the fact that certificates for said stock had been issued without any consideration therefor having been received by the defendant, and with the purpose and intent of deceiving the public and purchasers of said stock and inducing them to believe that all of said stock issued by the defendant had been fully paid, caused the said stock to be entered upon the books of the defendant as fully paid stock and to be charged to the construction account and other accounts upon said books at par, as having been fully paid by construction and equipment of defendant's railroads.

That said defendant also declared certain illegal dividends upon its capital stock which had not been earned and which should have been applied upon its debts. That the said dividends so illegally declared and paid amounted between September 13, 1873, and August 1, 1880, inclusive, to the sum of $21,860,200. That nearly all this amount of illegal dividends was received by one Leland Stanford, one Collis P. Huntington, one Charles Crocker, one Mark Hopkins hereinafter mentioned and the estate of said Mark Hopkins upon stock of said defendant illegally issued as aforesaid, which had cost them nothing. That the defendant declared and paid said dividends with the following purpose and intent, to wit:

1st. To give the said dividends to said Stanford, Hunting-
16 ton, Crocker and Hopkins and the estate.

2d. To create a fictitious value for said stock upon the market and thereby enable said Stanford, Huntington, Crocker, Hopkins and his personal representatives to sell and dispose of the same at good prices and thereby cheat and defraud purchasers of said stock.

That said false and fraudulent representations were caused by the defendant to be published in a book entitled "Manual of the Railroads of the United States for 1880, by Henry V. Poor, 13th annual number, New York. H. V. & H. W. Poor, 19 Broad street;" that said book was copyrighted by H. V. and H. W. Poor and was published by them in the city of New York, State of New York, in the year 1880; that said manual is a manual of the railroads of the United States by Henry V. Poor which has been published annually by H. V. and H. W. Poor in said New York city since about the year 1868; that said manual has had at all times since its first pub-

lication a very high reputation for accuracy and reliability and at all times since its first publication has been generally used by stock brokers and stock purchasers and dealers for the purpose of obtaining information concerning the affairs and financial condition of the various railroads in the United States; that in the year 1880 the defendant furnished to the editor and publishers of said manual, with the purpose and intent that it should be published in said manual, and knowing that it would be so published, an article or report entitled "Central Pacific Railroad" which purported to contain a statement of the defendant's affairs and financial condition, and which among other things, contained the following:

"*General Balance, December* 31*st*, 1879.

Railroad and appurtenances	$135,021,029.02
Rolling stock	8,030,468.77
Real estate and buildings	2,549,297.52
Materials and fuel	2,226,428.14
Stocks and bonds	982,184.68
Bills receivable	1,021,363.36
Accounts	5,423,693.89
17 Cash on hand	540,966.76
Sinking funds	4,068,662.90
Other property and assets	1,489,644.82
	$161,353,739.86

Capital stock	54,275,600.00
Funded debt	57,030,000.00
Bills payable	4,212,960.86
Other liabilities	1,131,605.39
Current accounts	1,465,455.00
Profit and loss	15,382,538.61
U. S. subsidy bonds	27,855,680.00
	$161,353,739.86"

That said report or article so furnished by the defendant was published in said manual for the year 1880, being the 13th annual number thereof, in said city of New York in said year; that the said balance sheet above set forth shows that there was a profit already made and on hand on December 31, 1879, of $15,382,538.61; that the said balance sheet was false and fraudulent in the following particulars:

1st. The said capital stock hereinbefore mentioned for which the defendant had received no consideration was included at par in the item "Railroad and appurtenances, $135,021,029.02," and also in the item "Capital stock, $54,275,500.00."

2d. On the 31st day of December, 1879, the defendant was owing to the Government of the United States the sum of $19,271,111.41 or thereabouts for accrued interest upon the Government loan of $27,855,680. of subsidy bonds, being interest on the same at the rate of six per cent. per annum from the respective dates of such bonds, which accrued interest had accumulated and remained entirely unpaid; that said item of $19,271,111.41 for accrued interest on the said Government loan of subsidy bonds was omitted entirely from said balance sheet and from said article published in said manual.

3d. Said balance sheet contained an item showing a profit of $15,382,538.61, to wit:—"Profit and loss $15,382,538.61," when there was, in fact, no profit but a loss. If the above item of accrued
18 interest had been included, it would have more than offset the said item of profit and shown a loss which should have appeared on the other side of the balance sheet. That similar false and fraudulent representations of the affairs and financial condition of the defendant were caused by the defendant, with a like intent, to be published in said manual in the numbers thereof published prior to 1880. That the defendant, with the purpose and intent of enabling the said stock to be sold and to cheat and defraud the purchasers of said stock, caused to be published annually in said "Poor's Manual," including said 13th annual number of said manual, as part of the statement concerning the financial affairs of the defendant, in each year after the declaration of the first of said dividends, the number, date, per centum and the amount of each of said dividends, which had been illegally declared and paid as aforesaid, prior to the several annual publications of said Poor's Manual.

That all of said transactions happened and were done by reason of a conspiracy between the defendant and one Leland Stanford, one Collis P. Huntington, one Mark Hopkins and one Charles Crocker, which persons were officers of the defendant, and the Contract and Finance Company, a California corporation, and others, entered into for the purpose of enabling said Stanford, Huntington, Crocker and Hopkins to acquire large amounts of illegal gains and profits and to enable them to sell said capital stock at good prices and to cheat and defraud the purchasers of said stock and those who subsequently dealt therein.

That at the times plaintiff purchased the stock hereinafter mentioned, he knew that the defendant had declared and paid the dividends hereinbefore mentioned, and had read the said statement concerning said dividends in said report or article contained
19 in said manual for 1880, and the plaintiff believed that the said dividends had been duly and legally declared and paid out of the surplus profits of the defendant; that at the times he purchased such stock, he knew that the said report or article and the said representations had been published in said manual for 1880 and had read said article and representations in said manual for 1880, being the 13th annual number, and at the time he so read said representations and at the times he purchased said stock, he be-

lieved that said article and said representations were in all respects true; that at the times he purchased said stock, he believed that all the stock and stock certificates issued by the defendant had been duly and legally issued and the said stock had been fully paid to the defendant, and that the defendant had received full consideration therefor; that at the times he purchased the said stock he did not know that the defendant was owing any accrued interest on said loan of United States subsidy bonds; that at the times he purchased the stock as hereinafter set forth he believed that the defendant on the 31st day of December, 1879, had profits on hand amounting to $15,382,538.61 as shown in said balance sheet published in said Poor's Manual in 1880 as aforesaid.

That in making the purchases of stock hereinafter mentioned, he relied upon and was induced thereto by said declaration and payment of said dividends; that in making said purchase of stock he relied upon and was induced thereto by said representations published as aforesaid in said Poor's Manual, 13th annual number, published in 1880; that in making said purchases of stock he relied upon said article and said balance sheet published in said Poor's Manual as aforesaid as showing the true financial condition of the defendant on the 31st day of December, 1879, and was induced by said article and particularly said balance sheet, to make said purchases; that in making said purchases of stock he relied upon all the stock and stock certificates issued by the defendant having been duly and legally issued, and having been fully paid to the defendant, and the defendant having received full consideration therefor, and was induced by the belief that such was the fact to make said purchases; that in making said purchases of stock he relied upon the defendant having on hand on the 31st day of December, 1879, profits amounting to $15,382,538.61, as shown by said balance sheet published as aforesaid, and was induced by the belief that such was the fact to make said purchases; and that he would not have purchased such stock or any thereof had he not believed, relied and been induced thereto as aforesaid.

That at various dates between the 22nd day of June, 1881, and the 28th day of May, 1883, inclusive, the plaintiff purchased various amounts of stock so illegally issued amounting to 3400 shares at various prices and paid various sums therefor, which amounted in all to $296,637.50, which purchases of said stock were made by him through the agency of others in the open market in the city of New York, State of New York, and said purchases were paid for by him at the times of said purchases in said city of New York, State of New York. That the said stock was not transferred to the plaintiff upon the books of the defendant but certificates representing said 3400 shares were assigned in blank to the defendant with blank powers of attorney authorizing the transfer of the same on the books of the defendant, which assignments and powers of attorney were executed by the persons to whom the said certificates had been issued by the defendant. That while said plaintiff held said stock, divers divi-

dends thereon were declared and paid by the defendant upon the presentation and surrender of certain dividend warrants attached to said certificates. That the defendant sold the said stock at divers times between the 2nd day of December, 1884, and the 2nd
21 day of April, 1885, inclusive, at divers prices and received therefor sums amounting to $107,712.50. That the said sales made by the defendant of said stock were made by him in the open stock market in the city of New York, State of New York. That the said purchases and sales of said stock were made at the market prices at the time of said respective purchases and sales.

That by the purchase and sale of said stock as aforesaid the plaintiff lost the sum of $188,925. and interest thereon from the 15th day of January, 1884, and interest on $14,150. from January 15, 1884, to December 2, 1884, on $3487.50 from January 15, 1884, to January 6, 1885, on $15,562.50 from January 15, 1884, to March 26, 1885, on $3212.50 from January 15, 1884, to March 27, 1885, on $9350. from January 15, 1884, to March 29, 1885, on $14,687.50 from January 15, 1884, to April 1, 1885, and on $47,262.50 from January 15, 1884, to April 2, 1885; that the said depreciation in the price of said capital stock was the result of the illegal acts and frauds of the defendant and the conspiracy hereinbefore set forth.

That by reason of the premises the plaintiff was damaged in the sum of $414,492.64 and interest thereon from the date of the commencement of this action, to wit, April 10, 1903. That the plaintiff did not discover the facts constituting the frauds hereinbefore set forth until in or about the month of December, 1902, and the defendant never made and never filed in the office of the secretary of state of the State of New York any designation of a person upon whom a summons could be served as provided in subdivision 2, section 432 of the Code of Civil Procedure or otherwise.

That the judgment demanded in this action is for the recovery from the defendant of the sum of $414,492.64 with interest thereon from the 10th day of April, 1903, and the costs and disbursements of this action.

22 That deponent has fully and fairly stated to his counsel John N. Carlisle, who resides in the city of Watertown, New York, and has an office at number 8 Stone street, Watertown, New York, the facts which he expects to prove by the testimony of himself as hereinafter stated, and that it is absolutely necessary for the prosecution of said action to take his testimony, and that his testimony is material and necessary for deponent in the prosecution of said action and without the benefit of the testimony of this deponent, he could not safely proceed to the trial of this action, as he is advised by his counsel after such statement made as aforesaid and as he verily believes. That the following facts and circumstances render the examination of this deponent material and necessary.

That a large part of said capital stock purchased by deponent as aforesaid, was purchased by him through the First National Bank of the City of New York, and a large part of said stock sold by him

as aforesaid was sold by him through said First national bank. That the books of account of said First National Bank of the City of New York, covering the period in which said purchases and sales of stock were made, have been destroyed, as affiant is informed and verily believes, and as will more fully appear by the affidavit of Frederick H. Remington, hereto attached. That by reason of the fact that said books of the First national bank have been destroyed as aforesaid, and by reason of the fact that said stock was not transferred to this deponent upon the books of the defendant, this deponent is the only person who can testify concerning the amounts of said stock purchased by him through said First national bank, concerning the dates of said purchases and the amounts paid for said stock; and this deponent is the only person who can testify concerning the amounts of said stock sold by him through said
23 First national bank, the dates of said sales and the amounts realized from said sales.

That a large part of the dividends received by the plaintiff as aforesaid, were collected for him from the defendant by the said First National Bank of the City of New York, and by reason of the fact of the said destruction of said books of said bank and from the fact that said stock was not transferred to the plaintiff upon the books of the defendant, this deponent is the only person who can testify concerning the dates and amounts of the said dividends so received by him.

That the testimony of this deponent is also material and necessary for the purpose of proving that before purchasing said stock, he read the said article concerning the Central Pacific railroad in said 13th annual number of said Poor's Manual. That he believed the said representations published in said manual and contained in said article to be true, and that he relied upon said representations in purchasing the said stock.

That the testimony of this deponent is also material and necessary for the purpose of proving that at the times of purchasing the said stock, he believed the said certificates representing the same to have been duly and legally issued and that the defendant had received full consideration therefor.

That the testimony of this deponent is also material and necessary for the purpose of proving that he did not know that on the 31st day of December, 1879, the defendant was owing any amount of accumulated interest on the subsidy bonds issued to the defendant by the United States, said date being the date of the said balance sheet contained in said article published in said Poor's Manual, and did not know that said balance sheet was false and fraudulent in containing the item "Profit and loss $15,382,538.61" and did not know that instead of making a profit, the road had sustained a loss at the date of said balance sheet, and that at the time he made the purchase of said stock, he believed that the said balance
24 sheet was in all respects true and that he relied upon said balance sheet in making the said purchase.

That the testimony of said deponent is also material and necessary for the purpose of proving that he knew that the said dividends had been declared by the defendant, and had read concerning the same in the said article, and that he believed at the times he made the said purchases of said stock that the said dividends had been duly and legally declared and did not know that the same should have been applied upon the debts owing by the defendant, and relied upon said dividends having been duly and legally declared out of the surplus profits earned by the defendant.

That the examination of this deponent is also material and necessary on account of the following facts and circumstances: That this deponent is eighty-seven years of age; that in the month of March, 1903, deponent had a severe attack of pneumonia lasting about four weeks; that in the summer of 1903, deponent had an attack of erysipelas in the face; that on account of deponent's age, his health is liable to suddenly fail and he may not be able to attend court at the time of the trial of this action or assessment of damages. That deponent's eyesight is very poor. That in order to testify concerning the amounts paid for said stock, the amounts received for the same and the amounts of dividends received and the dates relating to the same, it is necessary for deponent to refresh his memory from entries made by him in his books of account concerning said matters, and that if his eyesight should become any worse than it now is, it will be impossible for him to see such entries in said books. That if this action should not be tried within the life-time of deponent and should be revived by his personal representatives, his said personal representatives could not recover in said action without deponent's testimony. That deponent desires that said testimony or deposition of himself should be taken to be read on the trial of this action, or upon an assessment of damages by writ of inquiry, or upon a reference or otherwise in said action, or in any other action hereafter brought between the same parties or between any parties claiming under them, or either of them, as provided in section 881 of the Code of Civil Procedure.

Deponent further says that he has fully and fairly stated the facts in the above entitled action to his counsel John N. Carlisle, an attorney and counsellor of the supreme court, who resides at the city of Watertown, New York, and has an office at number 8 Stone street at the city of Watertown, New York, and that he has a good and substantial cause of action against the defendant as he is advised by said counsel after said statement made as aforesaid, and as he verily believes.

That all the foregoing statements in this affidavit after the word "facts" in the fourth line on page 3, to and including "1880" in the 16th line on page 4, and after "United States" in the 7th line from the bottom of page 4 to the end of the table of figures headed "General balance, December 31st, 1879" on page 5, and from and including the words "that the said balance" in the 25th line on page 5 to the end of the 11th line from the bottom of page 6 are

made by deponent upon information and belief; that similar allegations, but more in detail are made by deponent upon information and belief in the complaint in this action.

That the said defendant has not made a designation of any address either within or without the State, upon any of the preceding papers in this action, for the purpose of service of papers upon it or otherwise, except "15 Washington street, Watertown, N. Y." appearing under the signature of its attorneys, Purcell, Walker &
Burns, to the notice of special appearance, and notice of
26 motion, copies of which are hereto attached marked Exhibits "A" and "B" and made a part of this affidavit.

That no previous application has been made herein for an order to examine the deponent in this action and deponent therefore asks that an order may be made, pursuant to provisions of article 1, title 3, chapter 9 of the Code of Civil Procedure for his examination herein.

That the said motion made by the defendant and set forth in Exhibit "B" hereto attached, has been duly heard and denied by the court.

HIRAM REMINGTON.

Subscribed and sworn to before me this 16 day of October, 1903.

LUCILL R. BAIN,
Notary Public, Jefferson County, New York.

27 EXHIBIT "A."

Supreme Court, Jefferson County.

HIRAM REMINGTON
vs.
CENTRAL PACIFIC RAILWAY COMPANY.

Please take notice that we appear in this action for the defendant for the purpose only of making a motion herein to set aside the service of the summons in this action on the defendant.

Dated May 11th, 1903.

Yours, etc., PURCELL, WALKER & BURNS,
Attorneys for the Defendant for the Purposes Stated.

15 Washington street, Watertown, N. Y.

To Messrs. Brown, Carlisle & Hugo, Watertown, N. Y.

28 EXHIBIT "B."

Supreme Court, Jefferson County.

HIRAM REMINGTON
vs.
THE CENTRAL PACIFIC RAILWAY COMPANY.

Take notice that upon the summons herein and the affidavit of J. C. Stubbs, verified May 2nd, 1903, and a copy of which is hereto annexed and herewith served, a motion will be made at a special term of the supreme court, appointed to be held at the court house in the city of Utica, N. Y. on May 16th, 1903, at the opening of court on that day, or as soon thereafter as counsel can be heard, for an order setting aside the service of the summons herein, on the ground that such service was irregular, defective, null and void and of no effect; or for such other or further order as may be proper, with costs of motion.

Dated May 11, 1903.

Yours, etc., PURCELL, WALKER & BURNS,
Attorneys for Defendant for Purposes of This Motion Only.

15 Washington street, Watertown, N. Y.

To Messrs. Brown, Carlisle & Hugo, plaintiff's attorneys.

29 STATE OF NEW YORK:

Supreme Court, County of Jefferson.

HIRAM REMINGTON, Plaintiff,
vs.
CENTRAL PACIFIC RAILROAD COMPANY, Defendant.

STATE OF WISCONSIN, *Milwaukee County,* } ss:

Frederick H. Remington, being first duly sworn, deposes and says that he is a son of the plaintiff in the above entitled action. That he is an attorney and counsellor at law residing and practising law at the city of Milwaukee, Wisconsin. That he is one of the counsel for the plaintiff in the above entitled action. That in the month of January, 1903, affiant visited the First national bank in the city of New York, State of New York, for the purpose of seeing what entries were upon the books of said bank relating to the purchase and sale of stock in the Central Pacific Railroad Company by the above

named plaintiff, Hiram Remington, and for the purpose of seeing what entries were upon the books of said bank relating to the collection of dividends upon said stock for said plaintiff. That at said time affiant had an interview with a vice-president of said bank and was then and there informed by said vice-president that the account books of said bank covering the years 1881, 1882, 1883, 1884 and 1885 had been destroyed.

That in the month of January, 1903, affiant received a letter from an attorney at law residing at San Francisco, California, with whom he corresponded in reference to the matters involved in this action, which letter was dated January 20, 1903. That said letter, among other things, stated that the office of the Central Pacific Railroad Company is at number 4 Montgomery street, Southern Pacific building in said city of San Francisco.

FREDERICK H. REMINGTON.

Subscribed and sworn to before me this 6th day of October, 1903.

[SEAL.] FRED A. FOSTER,
Notary Public, Milwaukee County, Wisconsin.

STATE OF WISCONSIN, COUNTY OF MILWAUKEE, } ss:
Office of the Clerk of the Circuit Court,

I, A. A. Wieber, clerk of the circuit court being a court of record, and having a seal, do hereby certify that Fred A. Foster, Esquire, whose name appears subscribed to the annexed instrument, was at the date thereof a notary public within and for said State, residing in said county, duly appointed and qualified and empowered by the laws of said State to administer oaths, take depositions and acknowledgments of deeds, and perform such other duties as by the law of nations, or according to commercial usage may be performed by notaries public, and that to his acts and attestations as such, full faith and credit is and ought to be given in court and out. I further certify that I am well acquainted with the signature and handwriting of the aforesaid notary public, and I verily believe said signature, purporting to be his, is genuine; that the seal hereto attached is a correct impression of his official seal, and that said instrument is executed and acknowledged according to the laws of the State.

In witness whereof, I have hereunto set my hand and affixed the seal of said court at Milwaukee, in said county and State, on the 6th day of October, one thousand nine hundred and three.

[Seal of Circuit Court, Milwaukee County, Wisconsin.]

A. A. WIEBER,
Clerk of Circuit Court.

31 STATE OF NEW YORK:

Supreme Court, Jefferson County.

HIRAM REMINGTON, Plaintiff,
vs.
CENTRAL PACIFIC RAILROAD COMPANY, Defendant.

STATE OF NEW YORK,
City and County of New York, } ss:

Ellis L. Aldrich being duly sworn deposes and says that he resides at the city of New York, New York, and is over the age of twenty-one years. That on the 10th day of April, 1903, he personally served the annexed summons in the above entiled action upon the defendant, Central Pacific Railroad Company, which as deponent is informed and verily believes is a foreign corporation, by personally delivering to and leaving with J. C. Stubbs, who as deponent is informed and verily believes was then a director of the said corporation, a true copy of the said summons at 120 Broadway in the borough of Manhattan, city of New York, N. Y.; that at the time deponent served the said summons as aforesaid he knew the said Central Pacific Railroad Company to be the same person mentioned and described in the said summons as defendant therein.

The deponent further says that before making the service on the said J. C. Stubbs as director of the said defendant, he was informed by Brown, Carlisle and Hugo, plaintiff's attorneys, that from certain investigations made on behalf of the plaintiff by F. H. Remington, it appeared that all of the officers of the said defendant, Central Pacific Railroad Company, resided in San Francisco; that
32 J. L. Wilcutt, a secretary of the Central Pacific Railroad Company and N. T. Smith, treasurer of the Central Pacific Railroad Company, might be in New York city during the early part of April to attend a conference of persons representing the Southern Pacific Railroad Company with which they were connected. That on or about the 6th day of April, 1903, deponent sent Andrew Hunter, whose affidavit is hereto attached, to enquire at the office of the Southern Pacific Railroad Company which is also the office of the Central Pacific Railroad Company, for J. L. Wilcutt and N. T. Smith, but that the said Andrew Hunter was there advised that the said Wilcutt and Smith were not expected in New York and that there was nothing to bring them here; that they very seldom came to New York from San Francisco.

That deponent on the 10th day of April, learned that J. C. Stubbs who as he was informed and verily believes was at that time a director in the Central Pacific Railroad Company, was in New York for a day and deponent thereupon served him as aforesaid.

That subsequently on the 13th day of May, 1903, deponent called

at the office of the Central Pacific Railroad Company at 120 Broadway, borough of Manhattan, city of New York, and was there told by a person in the said office that all of the officers of the Central Pacific Railroad Company, on the 10th day of April 1903, resided and had their places of business in the western part of the United States, without the State of New York, and that there were on the said 10th day of April, 1903, no persons within the State of New York, performing corresponding functions to the president, treasurer or secretary of the said Central Pacific Railroad Company under another name. That deponent did not search for a person designated under the second subdivision of section 432 of the Code of Civil Procedure for the purpose of serving said summons upon said person for the reason that no such designation had been made
33 by the said defendant as deponent is informed and verily believes.

ELLIS L. ALDRICH.

Subscribed and sworn to before me this 6th day of June, 1903.

FRANCIS A. HUNEKAN,
Commissioner of Deeds for New York City.

STATE OF NEW YORK, } ss:
Jefferson County Clerk's Office, }

I, E. A. Chapman, county clerk of the county of Jefferson and clerk of the supreme and county courts in and for said county, the same being courts of record, do hereby certify that I have compared the foregoing copy of affidavit of Ellis L. Aldrich verified June 6th, 1903, hereto annexed with the original affidavit in this office and that the same is a true and correct transcript thereof and of the whole of said original.

In witness whereof, I have hereunto set my hand and affixed the seal of said courts at city of Watertown, N. Y. this 17th day of October, 1903.

[L. S.] (Signed) E. A. CHAPMAN, *Clerk.*

34 In Supreme Court, County of Jefferson.

HIRAM REMINGTON, Plaintiff,
vs.
CENTRAL PACIFIC RAILROAD COMPANY, Defendant.

STATE OF NEW YORK, } ss:
County of New York, }

Ellis L. Aldrich, being duly sworn, says that he resides at the city of New York, N. Y., and is over the age of twenty-one years.

That on the 10th day of April, 1903, he personally served a copy of the annexed summons upon J. C. Stubbs at 120 Broadway in the borough of Manhattan, city of New York, N. Y., by personally delivering to and leaving with the said J. C. Stubbs a true copy of the said summons.

That as deponent is informed and verily believes, the said defendant, Central Pacific Railroad Company, is a foreign corporation, and that the said J. C. Stubbs is and was at the time of said service a director of The Central Pacific Railroad Company the defendant named in the above entitled action.

That deponent further says that he used due diligence to obtain service of the said summons upon an officer of said defendant within the State of New York, but that no president, treasurer or secretary or officers performing corresponding functions under another name could be found by deponent within the State of New York.

That deponent has called at the office of the Southern Pacific Railroad Company in the borough of Manhattan, city of New York, N. Y., and was there informed that that was also the office of the defendant, Central Pacific Railroad Company. That deponent was further informed at the said office that none of the officers of the defendant, Central Pacific Railroad Company, resided or had his place of business in the State of New York, but that all of the officers of the said Central Pacific Railroad Company resided and had their places of business in the western part of the United States without the State of New York on the 10th day of April, when the said service was made.

ELLIS L. ALDRICH.

Sworn to before me this 15th day of May, 1903.

FREDERICK C. SIMONS,
Notary Public, # 324, *New York County*.

STATE OF NEW YORK,
Jefferson County Clerk's Office, } ss:

I, E. A. Chapman, county clerk of the county of Jefferson and clerk of the supreme and county courts in and for said county, the same being courts of record, do hereby certify that I have compared the foregoing copy of affidavit of Ellis L. Aldrich verified May 15, 1903, hereto annexed with the original affidavit in this office, and that the same is a true and correct transcript thereof and of the whole of said original.

In witness whereof, I have hereunto set my hand and affixed the seal of said courts at city of Watertown, N. Y. this 17th day of October, 1903.

[L. S.] (Signed) E. A. CHAPMAN, *Clerk*.

36 STATE OF NEW YORK:

Supreme Court, Jefferson County.

HIRAM REMINGTON, Plaintiff,
vs.
CENTRAL PACIFIC RAILROAD COMPANY, Defendant.

STATE OF NEW YORK,
County of New York, City of New York, } ss:

Andrew Hunter, being duly sworn, says, that on or about the 6th day of April, 1903, he was employed by Aldrich & Vandewalker, to make service of the summons in the above entitled action upon the defendant herein; that he proceeded on that day with said summons in his possession to the office of the Southern Pacific Railroad Company at 120 Broadway, Manhattan, New York city, which said office is also the office of the Central Pacific Railroad Company in New York, and made inquiries in said office for J. C. Willcutt the secretary and N. T. Smith the treasurer of said Central Pacific Railroad Company but that deponent was there informed that neither said Willcutt nor said Smith were in New York, but that they resided and had their places of business in the city of San Francisco, in the State of California; that neither of them were expected to come to New York and that they very seldom came East from San Francisco; that deponent reported the result of his effort to serve said paper to said Aldrich & Vandewalker.

ANDREW HUNTER.

Sworn to before me this 8th day of June, 1903.

WILLARD S. ALLEN,
Notary Public, New York County.

37 STATE OF NEW YORK,
Jefferson County Clerk's Office, } ss:

I, E. A. Chapman, county clerk of the county of Jefferson and clerk of the supreme and county courts in and for said county, the same being court of record, do hereby certify that I have compared the foregoing copy of affidavit of Andrew Hunter, verified June 8th, 1903, hereto annexed with the original affidavit in this office, and that the same is a true and correct transcript thereof and of the whole of said original.

In witness whereof I have hereunto set my hand and affixed the seal of said courts at city of Watertown, N. Y. this 17th day of October, 1903.

[L. S.] (Signed) E. A. CHAPMAN, *Clerk.*

[Endorsed:] Supreme court. Hiram Remington *vs.* Central Pacific Railroad Company. (Copies) Affidavit & order to examine plaintiff. Brown, Carlisle & Hugo, attorneys for plaintiff, 8 Stone street, Watertown, N. Y.

SIR: Take notice that the within is a copy of an order duly granted on the 19 day of October, 1903.

Yours, &c., BROWN, CARLISLE & HUGO,
Attorneys for Pl'ff, 8 Stone Street, Watertown, N. Y.

To —— ——, attorney for —.

38 At a special term of the supreme court, held at the court house in the city of Syracuse, N. Y., on the 24th day of October, 1903.

Present: Hon. W. S. Andrews, justice presiding.

Supreme Court, Jefferson County.

HIRAM REMINGTON
against
CENTRAL PACIFIC RAILROAD COMPANY.

An order having been made in this action and entered in the office of the clerk of Jefferson county October 2nd, 1903, denying a motion duly made by the defendant to set aside the service of the summons herein, and the defendant having appealed from said order to the appellate division of this court:

Now, on reading and filing the affidavit of Thomas Burns, one of the attorneys for the defendant above named, appearing specially herein, which affidavit was verified October 16th, 1903, and the notice of motion for an order staying all proceedings on the part of the plaintiff and the affidavit of Frederick H. Remington, verified October 19, 1903; and after hearing Purcell, Walker & Burns, in support of said motion, and Brown, Carlisle & Hugo, attorneys for the plaintiff, opposed, it is

Ordered, that the defendant be relieved from any default in appearing herein and that all proceedings on the part of the plaintiff be stayed pending said appeal and until ten days after the decision thereof, except that this order shall not stay the order for the examination of the plaintiff herein granted by Hon. E. C. Emerson, county judge of Jefferson county, and entered in said clerk's office October 19th, 1903.

Let the papers upon which this motion was made be filed and this order entered in Jefferson county.

Enter:

W. S. A., *J. S. C.*

Approved:
P., W. & B.
B., C. & H.

39 Supreme Court, Jefferson County.

HIRAM REMINGTON, Respondent,
vs.
CENTRAL PACIFIC RAILROAD COMPANY, Appellant.

SIRS: You will please take notice that upon the affidavit of Thomas Burns, hereto annexed, verified October 16th, 1903, and upon all the papers heretofore served or filed, and proceedings had in the above-entitled action, we will move this court, at a special term thereof, to be held at the court house *at the court house* in the city of Syracuse, N. Y., on the 24th day of October, 1903, at the opening of court on that day or as soon thereafter as counsel can be heard, for an order staying all proceedings on the part of the plaintiff, respondent, under the order entered herein in the clerk's office of Jefferson county on the 2nd day of October, 1903, until the decision of the appellate division of this court, fourth department, upon the appeal taken from the said order by the defendant, appellant, or for such other relief as may be just.

Dated, Watertown, N. Y., October 16th, 1903.

Yours, etc.,

PURCELL, WALKER & BURNS,
Attorneys for the Appellant for the Purposes of This Motion and said Appeal.

15 Washington street, Watertown, N. Y.

To Brown, Carlisle & Hugo, Esqrs., attorneys for the respondent.

40 Supreme Court, Jefferson County.

HIRAM REMINGTON, Respondent,
vs.
CENTRAL PACIFIC RAILROAD COMPANY, Appellant.

STATE OF NEW YORK,
County of Jefferson, City of Watertown, } ss:

Thomas Burns, being duly sworn, says he is one of the attorneys for the defendant above named, who appears specially in this action by Purcell, Walker & Burns, attorneys and counsellors of this court, residing at Watertown, N. Y.; that on the 2nd day of October, 1903, an order was entered in this action at a special term of this court, denying a motion made by the defendant, appearing specially as aforesaid, to set aside the service of the summons herein, which was served without a complaint or notice, as deponent is informed and believes, on or about April 10th, 1903; that no com-

plaint has been served or filed herein, as deponent is informed and believes.

That on October 15th, 1903, the defendant, through its said attorneys, appearing specially as aforesaid, served and filed a notice of appeal from said order to the appellate division of this court, fourth department, and has duly perfected said appeal from said order, and intends in good faith to prosecute the same, and that defendant will suffer serious inconvenience and loss if proceedings under the said order are not stayed until the decision of the appeal, as plaintiff might make application to this court for judgment herein; that no previous application for a like order has been made.

THOS. BURNS.

Sworn to before me this 16th day of October, 1903.

M. A. BURNS,
Com'r of Deeds, City of Watertown.

41 STATE OF NEW YORK:

Supreme Court, Jefferson County.

HIRAM REMINGTON, Plaintiff,
vs.
CENTRAL PACIFIC RAILROAD COMPANY, Defendant.

STATE OF WISCONSIN, *Milwaukee County*, } ss:

Frederick H. Remington, being first duly sworn, deposes and says that he is an attorney and counsellor at law and is one of the plaintiff's counsel in the above entitled action; that he is a son of said plaintiff; that if a stay of proceedings is ordered by the court sufficiently broad to prevent the taking of the plaintiff's deposition in said action it may result very disastrously to the rights of the plaintiff; that the plaintiff's evidence is absolutely necessary to support a verdict in behalf of the plaintiff in said action; that if the plaintiff's deposition is not taken and the plaintiff should become incapacitated as a witness before the trial of said action it would be impossible for him to recover in said action, and if the said action should not be tried within the lifetime of the plaintiff, and said action should be revived by his personal representatives, it would be impossible for them to recover in said action without the plaintiff's deposition; that affiant is fully informed concerning the sources from which the plaintiff, or his personal representatives, can obtain evidence, that a large part of the stock of the Central Pacific Railroad Company purchased by the plaintiff and subsequently sold by him, from which purchases of said stock this action arises, was purchased by the plaintiff and sold by him through the agency of the

First National Bank of the City of New York, and a large part of the dividends collected by the plaintiff from the de-
42 fendant on said stock during the time he held the same was collected for him through the agency of said First national bank; that in the month of January, 1903, affiant visited the said First national bank in said city of New York for the purpose of ascertaining what entries appeared upon the books of said bank relating to said stock, and that affiant was then and there informed by a vice-president of the said First national bank that all the books of account of said bank covering the period of said transactions has been destroyed; that for the reason that the certificates representing said stock so purchased by the plaintiff were not transferred to the plaintiff upon the books of the defendant, and on account of the destruction of said account books of said First national bank, the plaintiff is the only person who can testify concerning the said purchases and concerning said sales of said stock, and concerning the said dividends so collected; that the plaintiff is 87 years of age and his eye-sight is very poor; that in order that the plaintiff may testify concerning the purchases and sales of stock of the Central Pacific Railroad Company concerning which this action is brought, and concerning the dividends collected on the same, it will be necessary for the plaintiff to refresh his memory by reference to entries made in his books of account by him at the time of said transactions, and that if the plaintiff's eyesight should become any poorer it would be impossible for him to see the said entries in his said books; that the testimony of the plaintiff is material and necessary upon several other points in the case besides that above mentioned, and the plaintiff, or his personal representatives, in case of his death before the trial of this action, could not safely proceed to the trial of this action without his testimony upon such points; that among said points upon which his testimony is material and necessary is that concerning the reading by him of a certain article relating to the Central Pacific Railroad Company in Poor's Manual previous to the purchase of said stock, and the fact that he relied upon the information contained
43 in said article in purchasing the said stock, and that he believed the said article to be in all respects true at the time he made the said purchase; that the plaintiff had an attack of pneumonia in or about the month of March, 1903, lasting about four weeks, and in the summer of 1903 had an attack of erysipelas, and on this account, and also on account of his advanced age, it will be very hazardous to postpone the taking of his deposition; that papers have already been prepared for the purpose of taking the plaintiff's deposition on the 2d of November, 1903, and it is the intention of the plaintiff's attorneys and the plaintiff's counsel to take the said deposition at said time, after giving the defendant notice thereof as provided by the Code of Civil Procedure and the order for the taking of said deposition.

FREDERICK H. REMINGTON.

Subscribed and sworn to before me this 19th day of October, 1903.

FRED A. FOSTER,
[SEAL.] *Notary Public, Milwaukee County, Wisconsin.*

STATE OF WISCONSIN, COUNTY OF MILWAUKEE, } ss:
Office of the Clerk of the Circuit Court, }

I, A. A. Wieber, clerk of the circuit court of the county of Milwaukee, in the State of Wisconsin, the said court being a court of record and having a seal, do hereby certify that Fred A. Foster, Esquire, whose name appears subscribed to the annexed instrument, was at the date thereof a notary public within and for said State, residing in said county, duly appointed and qualified and empowered by the laws of said State to administer oaths, take depositions and acknowledgments of deeds, and perform such other duties as by the law of nations, or according to commercial usage, may be performed by notaries public, and that to his acts and attestations as such full faith and credit is and ought to be given in court and out. I further certify that I am well acquainted with the signature and handwriting of the aforesaid notary public, and I verily believe said signature, purporting to *he* his, is genuine; that the seal hereto attached is a correct impression of his official seal; and that said instrument is executed and acknowledged according to the laws of the State.

In witness whereof I have hereunto set my hand and affixed the seal of said court at Milwaukee, in said county and State, on the 19th day of October, one thousand nine hundred and three.

A. A. WIEBER,
[SEAL.] *Clerk of Circuit Court.*

44 Supreme Court, Jefferson County.

HIRAM REMINGTON
vs.
CENTRAL PACIFIC RAILROAD COMPANY.

GENTLEMEN: Please take notice, that the defendant herein appeals to the appellate division of the supreme court, fourth department, from the order of the supreme court herein, granted at a special term thereof on the 11th day of July, 1903, and entered in the clerk's office of the county of Jefferson on the 2d day of October, 1903, and from the whole of said order.

Dated, at Watertown, N. Y., October 15th, 1903.

Yours, etc., PURCELL, WALKER & BURNS,
Attorneys for the Appellant, for the Purposes of This Appeal.

15 Washington street, Watertown, N. Y.

To the clerk of the county of Jefferson, and to Brown, Carlisle & Hugo, Esqs., attorneys for the respondent.

45 At a special term of the supreme court held at the court house in the city of Syracuse, N. Y. on the 11th day of July, 1903.

Present: Hon. William S. Andrews, justice presiding.

Supreme Court, Jefferson County.

HIRAM REMINGTON
vs.
CENTRAL PACIFIC RAILROAD COMPANY.

On reading and filing the notice of motion herein made by the defendant to set aside the service of the summons herein, and on reading and filing the affidavit of J. C. Stubbs, verified May 2, 1903, and the affidavit of George Watkins, verified June 24, 1903; the affidavit of Maxwell Evarts, verified June 26, 1903; the affidavit of Isaac E. Gates, verified June 24, 1903, in favor of said motion, and on reading and filing the three affidavits of Frederick H. Remington, verified respectively May 16, May 28 and July 2, 1903, and two affidavits of the plaintiff Hiram Remington, verified May 19, 1903, and July 6, 1903, respectively, and the affidavit of Robert J. Cutting, verified July 7, 1903, and two affidavits of Ellis L. Aldrich, verified May 15th, 1903, and June 6, 1903, respectively; and affidavit of Andrew Hunter, verified June 8, 1903; affidavit of Augustus T. Gillender, verified July 26, 1903, affidavit of George Watkins, verified July 2, 1903; affidavit of Charles H. Patterson, verified July 2, 1903, and the certificate of the secretary of state, dated June 1, 1903, in opposition to said motion and on reading
46 and filing the stipulation signed by the attorneys for the parties hereto, dated August 24, 1903, submitting this motion to the above term of court, and after hearing Purcell, Walker & Burns, counsel for defendant in favor of said motion, and Brown, Carlisle & Hugo, counsel for plaintiff in opposition thereto,

It is hereby ordered that said motion be and the same is hereby denied with ten dollars' costs to the plaintiff.

Enter in Jefferson county

Dated Sept. 28th, 1903.

Enter:

W. S. A., *J. S. C.*

47 In Supreme Court, Jefferson County.

HIRAM REMINGTON
vs.
CENTRAL PACIFIC RAILROAD COMPANY.

Whereas a notice of motion was heretofore made by the defendant in the above entitled action for an order to set aside the service of the summons herein, which motion was noticed for a special term

of the supreme court appointed to be held at the court house in the city of Utica, N. Y. on the 16th day of May, 1903, and

Whereas, said motion was by stipulation transferred to a special term appointed to be held at the city of Watertown, N. Y. on the 25th day of May, 1903, and

Whereas, Mr. Justice Rogers who held said term declined to hear said motion for the reason that he had, previous to his election, acted as counsel for the plaintiff, and

Whereas, the hearing of said motion was then fixed by agreement for a special term appointed to be held in the city of Watertown, N. Y., on the 9th day of June, 1903, and

Whereas, at that time the papers of the respective counsel having been presented, the court allowed the defendant until July 1, 1903, to serve additional affidavits, and the hearing of the motion was ordered to be set down for a special term appointed to be held in the city of Syracuse, N. Y. on the 11th day of July, 1903, and

Whereas, said motion was not heard at said term on account of the illness of Mr. Purcell, one of the attorneys for the defendant, and it is desired that the said motion and all papers in connection therewith should be submitted to Hon. William S. Andrews, justice of the supreme court, for his decision,

It is now hereby stipulated that said motion and all papers in connection therewith be submitted to said justice as of the special term heretofore appointed to be held at the court house in the city of Syracuse, N. Y. on the 11th day of July, 1903, with the same force and effect as if said motion papers had been submitted at said special term.

Dated August 24, 1903.

BROWN, CARLISLE & HUGO,
Plaintiff's Attorneys.
PURCELL, WALKER & BURNS,
Defendant's Attorneys, Appearing Specially.

48 STATE OF NEW YORK:

Supreme Court, Jefferson County.

HIRAM REMINGTON, Plaintiff,
vs.
CENTRAL PACIFIC RAILROAD COMPANY, Defendant.

STATE OF NEW YORK,
County of New York, } ss:

Robert L. Cutting, being first duly sworn on oath deposes and says that he is an attorney and counselor-at-law, duly admitted to practice as such in the courts of the State of New York; that he has his office at No. 41 Park row, in the city of New York; that he

is the attorney for the plaintiff in an action now pending in the supreme court of the State of New York, county of New York, wherein one Walter Morshead, on behalf of the stockholders of the Central Pacific Railroad Company is plaintiff, and Charles H. Tweed, Isaac E. Gates and Arabella Huntington, as executors of Collis P. Huntington, deceased, and The Central Pacific Railroad Company are defendants; that the summons in said action was served upon said Isaac E. Gates and on said Central Pacific Railroad Company on the 29th day of August, 1902; as appears by the sheriff's return attached to said summons; that the complaint in said action was verified by the plaintiff on the 8th day of October, 1902, and the answer of said Isaac E. Gates as such executor, a copy of which has been served upon affiant, was verified on the 5th day of December, 1902; that the defendant Central Pacific
49 Railroad Company has not served any answer in said action; that the said action has not yet been tried and is still pending for trial upon the issues raised by the answer of said Isaac E. Gates; that a copy of the complaint in said action, with the exception of the verification, is hereto attached marked Exhibit "A" and made a part of this affidavit; that before drawing the said complaint affiant made a careful investigation of evidence relating to the facts set forth in said complaint; that after making the said investigation affiant verily believes that the said complaint Exhibit "A" truthfully states the facts relating to the controversy in said action, and verily believes that the said complaint is in all respects true; that Collis P. Huntington mentioned in said complaint was at the time of his death and for many years prior thereto, a resident of the city of New York, State of New York, and that Charles H. Tweed, Isaac E. Gates and Arabella Huntington, the executors of his last will and testament, and the defendants as such executors in said action, are residents of the said city of New York.

Deponent further says that the action brought by Walter Morshead as above set forth has not been abandoned but that deponent intends in good faith to try said action, and verily believes that the plaintiff has a good and substantial cause of action upon the merits against the defendant in said action.

ROBERT L. CUTTING.

Subscribed and sworn to before me this 7th day of July, 1903.

[NOTARIAL SEAL.] ALPHONSE KLOH,
Notary Public, New York County, New York.

50 EXHIBIT A.

Supreme Court of the State of New York, City and County of New York.

WALTER MORSHEAD, on Behalf of the Stockholders of the Central Pacific Railroad Company, Plaintiff,
against
CHARLES H. TWEED, ISAAC E. GATES, ARABELLA Huntington, as Executors of Collis P. Huntington, and The Central Pacific Railroad Company, Defendants. } *Complaint.*

The plaintiff herein by Robert L. Cutting, his attorney, complains of the defendants, and shows:

I. That the plaintiff is the owner and holder of one hundred shares of the capital stock of the Central Pacific Railroad Company, which stands in his name on the stock books of said company and has so stood for about eight years last past, and that he is the owner of other shares of said Central Pacific railroad stock which is held in trust for him, and that plaintiff is a resident of the State of New York. That he brings this action on behalf of holders of other shares of stock in the Central Pacific Railroad Company similarly situated, and at the special request of some thereof. That Charles H. Tweed, Isaac E. Gates and Arabella Huntington are the duly qualified executors of the estate of Collis P. Huntington, as hereinafter set forth. That the Central Pacific Railroad Company is a foreign railroad corporation created by and organized under the laws of the State of California.

II. That the plaintiff has duly made demand in writing
51 on the officers and directors of the said Central Pacific Railroad Company, that they institute legal proceedings for the cause of action stated in this complaint. But that the said Central Pacific Railroad Company has not instituted, so far as this plaintiff knows, any such legal proceedings against these individual defendants. That the said Huntington during his lifetime was an officer and director of the said Central Pacific Railroad Company and, as plaintiff is informed and believes, the said Tweed and Gates were, and still are, officers of the said Central Pacific Railroad Company. And, as plaintiff is informed and believes, said Huntington and associates in the transactions hereinafter set forth, controlled the board of directors of the said Central Pacific Railroad Company during said Huntington's lifetime, and that since the death of the said Huntington, the said Tweed and associates have, and do now, influenced by him, control, and dominate the said board of directors of the said Central Pacific Railroad Company to such an extent, that, as this plaintiff is informed and verily believes, no attempt has been

or will be made to establish the liability of the said Huntington, or for the recovery from the estate of the said Huntington of the sums of money for which the said Huntington was liable by his acts as set forth in this complaint. That no corporate meeting of the said Central Pacific Railroad Company has been held, nor have any new officers been elected, since the year 1899, though the said corporation has never been dissolved.

III. That the Central Pacific Railroad Company is a railroad corporation organized under the laws of the State of California and that said Central Pacific Railroad Company received large loans and subsidies from the United States of America in bonds amounting in the aggregate to some thirty millions of dollars in value, more or
52 less, for the construction and equipment of its said railroad.

IV. That the said Collis P. Huntington, together with Leland Stanford, Charles Crocker and Mark Hopkins, were directors and officers of the said Central Pacific Railroad Company, and to the time of their decease they were, as plaintiff is informed and believes, in control of the corporate affairs of the said Central Pacific Railroad Company. And the said Collis P. Huntington was, in addition, the financial agent of the said Central Pacific Railroad Company in New York city and in Washington, D. C. and until the year 1899 held a general power of attorney to transact all the corporate business of the said railroad company in said places as its general agent.

V. That, as the plaintiff is informed and believes, said Huntington and his associates, the said Stanford, Crocker, and Hopkins, organized or caused to be organized certain companies known as the Contract and Finance Company, the Western Development Company, the Pacific Improvement Company, the Pacific Express Company, the Rocky Mountain Coal Company, and other companies, which companies were personally owned or controlled, through ownership of the stock thereof, by the said Huntington and his said associates, either personally or by and through their agents, dummies and accomplices. And the said Huntington and his said associates, using the names, corporate forms, and instrumentalities of these said companies together with themselves, acting in the name of the Central Pacific Railroad Company and on its behalf, for the construction, equipment, and repairing of said railroad, and for the purchase and leasing of branch and auxiliary lines of railroad, and for the purchase of coal and materials for the said railroad company, and for doing express business of the said railroad company, and for other purposes. And the said Huntington
53 and his associates, while in control of the said Central Pacific Railroad Company, as its officers, directors, and agents, were also at all times interested in the results of the said contracts made between the Central Pacific Railroad Company and the other said companies through their ownership of the stocks of the said companies.

VI. And that in pursuance of these fraudulent arrangements, as

the plaintiff is informed and believes, the said Huntington and his associates from time to time delivered to themselves, through the instrumentalities of the said companies named in paragraph V herein, the whole or a greater part of the thirty million dollars' worth of the aforesaid United States bonds, and likewise the whole or a greater part of bonds and capital stock of the said Central Pacific Railroad Company to the total value, as the plaintiff is informed and believes, of upwards of one hundred and sixty-three millions of dollars, which bonds and stocks were obtained in pretended payment to the companies aforesaid for the purposes set out in paragraph V of this complaint. And the plaintiff herein is informed and believes that the construction of the said Central Pacific Railroad Company's railroad and of all its constituents, leased and auxiliary lines, did not actually cost more than sixty millions of dollars, so that the pretended payment- to the aforesaid companies on alleged construction and other contracts and for other purposes were fraudulent, grossly excessive, collusive, and in violation of the duties of the said Huntington and his associates as officers, directors and agents of the said Central Pacific Railroad Company; and the plaintiff alleges on information and belief that the said United States bonds and the bonds and stock of the said Central Pacific Railroad Company were actually converted to their own use or uses by the said Huntington and his said associates through the col-
54 orable and fraudulent devices herein set forth.

VII. And, as this plaintiff is informed and believes, the said Huntington, from the beginning of the frauds and devices herein alleged and throughout their pendency for the most part directed and managed these schemes and conspiracies to plunder the said Central Pacific Railroad Company, which schemes and conspiracies were consummated and resulted in the conversions set forth more particularly in paragraphs V and VI of this complaint. The said Hopkins died in the year 1878. The said Crocker died in the year 1888. And the said Stanford died in the year 1893. But, as this plaintiff is informed and believes, the conversions of the property of the said Central Pacific Railroad Company and the other illegal and fraudulent acts herein alleged, or some of them, were continued by the said Huntington down to the time of his death, in August, 1900.

VIII. That the said Collis P. Huntington departed this life on August 13th, 1900. That his will was approved and letters testamentary were duly issued to his executors, the defendants herein, to-wit: Charles H. Tweed, Isaac E. Gates, Arabella Huntington, on October 15th, 1900, by the surrogate of New York county.

Wherefore, the plaintiff prays that the said executors, the defendants herein, be decreed to account for the profits made by their said decedent, Collis P. Huntington, as set out in this complaint, and that the said executors pay the said profits with legal interest, to the Central Pacific Railroad Company for the benefit of its stockholders.

And the plaintiff further prays for an order that the said executors the defendants herein, be enjoined by this court from paying
55 out, distributing or in any way disposing of or parting with the assets of the said estate of their said decedent, Collis P., Huntington, until the amounts owing to the Central Pacific Railroad Company, be ascertained and adjudged, or until further order of this court.

That the plaintiff have such other, further and different relief as to the court may seem just.

ROBERT L. CUTTING,
Plaintiff's Attorney.

Post office and office address, 41 Park row, New York city.

56 Supreme Court of New York, Jefferson County.

HIRAM REMINGTON, Plaintiff,
against
CENTRAL PACIFIC RAILROAD COMPANY, Defendant.

STATE OF NEW YORK, }
County of New York, } ss.:

Maxwell Evarts, being duly sworn, deposes and says: I am the counsel for the defendant in the above entitled action and reside at No. 238 East 13th street, in the city of New York. I am also the attorney for the defendant Isaac E. Gates in the action brought in the supreme court of the State of New York, in and for the county of New York, wherein one Walter Morshead is plaintiff and the executors of Collis P. Huntington, deceased, and The Central Pacific Railroad Company are named as defendants, referred to in the affidavit of Frederick H. Remington, counsel for the plaintiff herein, verified the 28th day of May, 1903. I deny the allegations in said affidavit of Frederick H. Remington that the summons in said action was served upon the Central Pacific Railroad Company. On the contrary, the summons in said action was never served upon the Central Pacific Railroad Company, or upon any of the parties named as defendants in the action, except the defendant Isaac E. Gates. Said action has never been in any way pressed by the plaintiff and has not even been put upon the calendar of the court and has virtually been abandoned.

57 I deny that on the 10th day of April, 1903, or at any other time, the Central Pacific Railroad Company had a large claim or any claim against the estate of Collis P. Huntington, deceased, and the excutors of his last will and testament, as is alleged in said affidavit of Frederick H. Remington. I deny that the Central Pacific Railroad Company had on the 10th day of April, 1903, or has had since the 29th day of July, 1899, any property whatever of any

kind in the State of New York; and do further aver that since the date last mentioned the said company has not done or transacted any business within this State.

This action so far as it is possible to judge from the affidavits submitted by the plaintiff, seems to be of the same general character as the many litigations with which I am familiar brought by Walter Morshead, who is referred to in the affidavit of Frederick H. Remington, verified the 28th day of May, 1903, as being the plaintiff in a suit against the executors of Collis P. Huntington, deceased. The said Morshead is the holder of 100 shares of the stock of the Central Pacific Railroad Company, and since the readjustment of the affairs of said company, with the United States in the year 1899, he has been the plaintiff in at least four litigations in regard to the affairs of the Central Pacific Railroad Company, none of which have ever been actually pressed by the plaintiff in any way, and all of which were brought, as I am informed and believe, to harass and annoy the said company.

On the 2nd day of December, 1902, the said Morshead made an application to the surrogate's court of the county of New York to require the executors of Collis P. Huntington, deceased, to file an inventory of the estate. This application was based upon the same facts set forth in the complaint referred to in the affidavit of
58 said Frederick H. Remington, verified May 28th, 1903, a copy of which complaint is attached to the affidavit of Isaac E. Gates, submitted herewith. This application was denied by the surrogate and at the end of a written opinion the character of the Morshead claim was referred to by the surrogate as follows:

"The purpose of filing an inventory is to give information to the parties having interest in the assets. Even if a discretionary power could be spelled out from the statute, to require the exhibition of the affairs of the estate on the request of a person holding an unproved and disallowed demand, such discretion should be exercised, only where the surrogate is satisfied *that the claim is probably meritorious*, and that the opposition to it is vexatious and probably unreasonable. *The facts disclosed by the affidavits submitted on this application do not lead me to any such conclusion, and, if I have such discretionary power, I refuse to exercise it. The application is denied.*

MAXWELL EVARTS.

Subscribed and sworn to before me this 26 day of June, 1903.

[NOTARIAL SEAL.] CHARLES FRANKLIN,
Notary Public, 127, *New York County.*

59 Supreme Court of New York, Jefferson County.

HIRAM REMINGTON, Plaintiff,
against
CENTRAL PACIFIC RAILROAD COMPANY, Defendant.

STATE OF NEW YORK,
County of Kings, } ss:

George Watkins, being duly sworn, deposes and says: I reside at 656 Nostrand avenue, in the borough of Brooklyn, city of New York. From the month of May, 1882, to and including the month of July, 1899, I was the transfer agent in the city of New York of the Central Pacific Railroad Company and had charge of the transfer books of said company, and at no time during said period was any stock of the Central Pacific Railroad Company transferred upon said books to the plaintiff herein Hiram Remington. I further state that the transfer books of the Central Pacific Railroad Company show that at no time was any stock of the Central Pacific Railroad Company ever transferred to the said Hiram Remington, and that at no time did any stock stand in his name upon the books of said company.

GEO. WATKINS.

Subscribed and sworn to before me this 24th day of June, 1903.

WM. G. ANDERSON,
Notary Public, # 76, Kings Co., N. Y.

60 Supreme Court of New York, Jefferson County.

HIRAM REMINGTON, Plaintiff,
vs.
CENTRAL PACIFIC RAILROAD COMPANY, Defendant.

STATE OF NEW YORK,
County of New York, } ss:

Isaac E. Gates, being duly sworn, deposes and says: I am one of the executors of the last will and testament of Collis P. Huntington, deceased. From the year 1875 to the time of Mr. Huntington's death I was intimately acquainted with all his business matters and I am able to and do state on my own knowledge that said Huntington, at the time of his death, was not indebted to the Central Pacific Railroad Company in any amount whatever, and that the said Central Pacific Railroad Company never had any claim of any kind against the estate of said Huntington.

I was from the year 1875 to the year 1901 closely connected with

the affairs of the Central Pacific Railroad Company, holding the following offices for the times stated, viz:

From 1889 to 1894 (with the possible exception of a single year) the office of acting vice president of said company;

From 1895 to 1898, the office of director and third vice president of said company.

61 Referring to the following allegations in the affidavit of Frederick H. Remington, counsel for the plaintiff in the above entitled action, verified the 16th day of May, 1903, and submitted by the plaintiff in opposition to the motion to set aside the service of the summons in the above case, viz:—

"That the cause of action for which the above entitled action is brought arose in the State of New York during the period that the said defendant maintained an office in said city of New York as aforesaid; that this action is brought for the purpose of recovering damages from the said Central Pacific Railroad Company for issuing illegal and void certificates of the capital stock of said Central Pacific Railroad Company, and for making and causing to be published false and fraudulent representations concerning the capital stock represented by said certificates, and concerning the affairs and conditions of said Central Pacific Railroad Company, and concerning the consideration paid to said company for said stock, for the purpose of giving said capital stock represented by said certificates a fictitious value upon the market, and for the purpose of inducing the public to purchase said stock represented by said certificates; and upon the ground that said illegal, fraudulent and void certificates of stock were issued by the defendant in the State of New York, and that said false and fraudulent representations were made and published by the defendant in the State of New York; and upon the ground that the plaintiff, Hiram Remington, is and at all times herein mentioned was a resident of the State of New York, and that the said plaintiff, believing the said certificates of stock to be legal and properly issued, and believing that full consideration had been

62 paid to said defendant, Central Pacific Railroad Company therefor, and relying upon the said certificates of stock being legal, valid and properly issued, and relying upon the said representations made as aforesaid being true, and induced by said belief and by said representations, purchased a large amount of said stock represented by said illegal and fraudulent certificates, which purchases were made by him in the city of New York, State of New York, and paid large sums of money for the same, which payments were made by him in the city of New York, State of New York, and such illegal, fraudulent and void certificates were thereupon transferred to him in the city of New York, State of New York. And upon the ground that the said certificates were in fact worthless and well known to the defendant to be worthless when issued as aforesaid and when said representations were made and published as aforesaid; and that by reason of the said illegal, fraudulent and void issue of said certificates by the defendant, and by reason of

said false and fraudulent representations, those of the same so purchased by the plaintiff greatly depreciated while they were held by him, and the plaintiff lost a large amount of money by reason of having purchased the said fraudulent and void certificates of stock as aforesaid, and was damaged in the amount of said loss by reason of the facts herein set forth and which will be more fully set forth in the complaint in this action."

I deny said allegations, and each of them, except the allegation that Hiram Remington is and at all times mentioned in said affidavit was a resident of the State of New York, as to which I have no knowledge or information.

63 Referring to the following allegations in the affidavit of Frederick H. Remington, counsel for the plaintiff in the above entitled action, verified the 28th day of May, 1903, and submitted by the plaintiff in opposition to the motion to set aside the service of the summons in the above case, viz.:

"That at the date of the service of the summons in this action upon said J. C. Stubbs, a director of the defendant on the 10th day of April, 1903, the above named defendant, Central Pacific Railroad Company, had, and still has, property within the State of New York, to-wit: a large claim against the estate of said Collis P. Huntington, and the executors of said last will and testament."

I deny said allegations and each of them.

Referring to the allegation of said Frederick H. Remington, counsel for the plaintiff above named, that an action had been brought in the supreme court of the State of New York by one Walter Morshead on behalf of the stockholders of the Central Pacific Railroad Company, I have to say that on the 29th day of August, 1902, there was served upon me a summons in this action, but that, as I am informed and believe, said summons has not been served upon any of the other defendants therein. I attach hereto, as part of this affidavit, a copy of the complaint and of my answer in said action, marked Exhibits "A" and "B." This action has never been pressed for trial by the plaintiff and has never even been put upon the calendar of the court.

The capital stock of the Central Pacific Railroad Company amounts in the aggregate to about 672,755 shares of which the Southern Pacific Company has heretofore acquired stock to the amount of upwards of 671,500 shares, most of this stock having been acquired in connection with the Central Pacific read-

64 justment of 1899. The whole amount of capital stock of the Central Pacific Railroad Company, not acquired by the Southern Pacific Company, is less than 800 shares.

As I am informed and verily believe, no stock of the Central Pacific Railroad Company ever stood in the name of or was ever transferred upon the books of the said company to the plaintiff, Hiram Remington.

I. E. GATES.

Subscribed and sworn to before me this 24" day of June, 1903.

CHARLES FRANKLIN,
[NOTARIAL SEAL.] *Notary Public* 127, *New York County.*

65 EXHIBIT "A."

Supreme Court of the State of New York, City and County of New York.

WALTER MORSHEAD, on Behalf of the Stockholders of the Central Pacific Railroad Company, Plaintiff,
against
CHARLES H. TWEED, ISAAC E. GATES, ARABELLA HUNTINGTON, as Executors of Collis P. Huntington, and The Central Pacific Railroad Company, Defendants.

The plaintiff herein by Robert L. Cutting, his attorney, complains of the defendants, and shows:—

I. That the plaintiff is the owner and holder of one hundred shares of the capital stock of the Central Pacific Railroad Company, which stands in his name on the stock books of said company, and has so stood for about eight years last past, and that he is the owner of other shares of the said Central Pacific Railroad stock which is held in trust for him, and that plaintiff is a resident of the State of New York. That he brings this action on behalf of holders of other shares of stock in the Central Pacific Railroad Company similarly situated, and at the special request of some thereof. That Charles H. Tweed, Isaac E. Gates, and Arabella Huntington are the duly qualified executors of the estate of Collis P. Huntington as hereinafter set forth. That the Central Pacific Railroad Company is a foreign railroad corporation created by and organized under the laws of the State of California.

66 II. That the plaintiff has duly made demand in writing on the officers and directors of the said Central Pacific Railroad Company, that they institute legal proceedings for the cause of action stated in this complaint. But that the said Central Pacific Railroad Company has not instituted, so far as this plaintiff knows, any said legal proceedings against these individual defendants. That the said Huntington during his lifetime was an officer and director of the said Central Pacific Railroad Company and, as plaintiff is informed and believes, the said Tweed and Gates were, and still are, officers of the said Central Pacific Railroad Company. And, as the plaintiff is informed and believes, the said Huntington and associates in the transactions hereinafter set forth, controlled the board of directors of the said Central Pacific Railroad Company during the said Huntington's lifetime, and that since the death of the said Huntington the said Tweed and associates have, and do now, influenced by him,

control and dominate the said board of directors of the said Central Pacific Railroad Company to such an extent that, as this plaintiff is informed and verily believes, no attempt has been or will be made to establish the liability of the said Huntington, or for the recovery from the estate of the said Huntington of the sums of money for which the said Huntington was liable by his acts as set forth in this complaint. That no corporate meeting of the said Central Pacific Railroad Company has been held, nor have any new officers been elected, since the year 1899, though the said corporation has never been dissolved.

III. That the Central Pacific Railroad Company is a railroad corporation organized under the laws of the State of California and that said Central Pacific Railroad Company received large loans and subsidies from the United States of America in bonds amount-
67 ing in the aggregate to some thirty millions of dollars in value, more or less, for the construction and equipment of its said railroad.

IV. That the said Collis P. Huntington, together with Leland Stanford, Charles Crocker and Mark Hopkins were directors and officers of the said Central Pacific Railroad Company, and to the time of their decease they were, as plaintiff is informed and believes, in control of the corporate affairs of the said Central Pacific Railroad Company. And the said Collis P. Huntington was, in addition, the financial agent of the said Central Pacific Railroad Company in New York city and in Washington, D. C., and until the year 1899 held a general power of attorney to transact all the corporate business of the said railroad company in said places as its general agent.

V. That, as the plaintiff is informed and believes, the said Huntington and his associates, the said Stanford, Crocker and Hopkins, organized or caused to be organized certain companies known as the Contract and Finance Company, the Western Development Company, the Pacific Improvement Company, the Pacific Express Company, the Rocky Mountain Coal Company, and other companies, which companies were personally owned or controlled, through the ownership of the stock thereof, by the said Huntington and his said associates, either personally or by and through their agents, dummies and accomplices. And the said Huntington and his said associates, used the names, corporate forms, and instrumentalities of these said companies to agree with themselves, acting in the name of the said Central Pacific Railroad Company and on its behalf, for the construction, equipment, and repairing of said railroad, and for the purchase and leasing of branch and auxiliary lines of railroad, and for the purchase of coal and materials for the said rail-
68 road company, and for doing the express business of the said railroad company, and for other purposes. And the said Huntington and his associates, while in control of the said Central Pacific Railroad Company, as its officers, directors and agents, were also at all times interested in the results of the said contracts made

between the said Central Pacific Railroad Company and the other said companies, through their ownership of the stocks of the said companies.

VI. And that in pursuance of these fraudulent arrangements, as the plaintiff is informed and believes, the said Huntington and his associates from time to time delivered to themselves, through the instrumentalities of the said companies named in paragraph V herein, the whole or a greater part of the thirty million dollars' worth of the aforesaid United States bonds and likewise the whole or a greater part of the bonds and capital stock of the said Central Pacific Railroad Company, to the total value, as the plaintiff is informed and believes, of upwards of one hundred and sixty-three millions of dollars, which bonds and stocks were obtained in pretended payment to the companies aforesaid for the purposes set out in paragraph V of this complaint. And the plaintiff herein is informed and believes that the construction of the said Central Pacific Railroad Company's railroad and of all its constituent, leased and auxiliary lines did not actually cost more than sixty millions of dollars. So that the pretended payments to the aforesaid companies on alleged construction and other contracts and for other purposes, were fraudulent, grossly excessive, collusive, and in violation of the duties of the said Huntington and his associates as officers, directors, and agents of the said Central Pacific Railroad Company; and the plaintiff alleges on information and belief that the said United States bonds and the bonds and stock of the said Central Pacific Railroad Company were actually converted to
69 their own use or uses by the said Huntington and his said associates through the colorable and fraudulent devices herein set forth.

VII. And as this plaintiff is informed and believes, the said Huntington, from the beginning of the frauds and devices herein alleged and throughout their pendency for the most part directed and managed these schemes and conspiracies to plunder the said Central Pacific Railroad Company, which schemes and conspiracies were consummated and resulted in the conversions set forth more particularly in paragraphs V and VI of this complaint. The said Hopkins died in the year 1878, the said Crocker died in the year 1888, and the said Stanford died in the year 1893. But, as this plaintiff is informed and believes, the conversions of the property of the said Central Pacific Railroad Company and the other illegal and fraudulent acts herein alleged, or some of them, were continued by the said Huntington down to the time of his death in August, 1900.

VIII. That the said Collis P. Huntington departed this life on August 13th, 1900. That his will was proved and letters testamentary were duly issued to his executors, the defendants herein, to-wit: Charles H. Tweed, Isaac E. Gates, and Arabella Huntington, on October 15th, 1900, by the surrogate of New York county.

Wherefore, the plaintiff prays,—that the said executors, the de-

fendants herein, be decreed to account for the profits made by their said decedent, Collis P. Huntington, as set out in this complaint, and that the said executors pay the said profits with legal interest, to the Central Pacific Railroad Company for the benefit of its stockholders.

And the plaintiff further prays for an order that the said executors, defendants herein, be enjoined by this court from paying out, distributing, or in any way disposing of or parting with the assets of the said estate of their said decedent, Collis P. Huntington, until the amounts owing to the Central Pacific Railroad Company be ascertained and adjudged, or until the further order of this court.

That the plaintiff have such other, further and different relief, as to the court may seem just.

ROBERT L. CUTTING,
Plaintiff's Attorney.

Office and post office address, 41 Park row, New York city.

KINGDOM OF GREAT BRITAIN AND IRELAND, *County of London,* } *ss.:*

Walter Morshead, being duly sworn, deposes and says: That he is the plaintiff in the above entitled action: that he has read the foregoing complaint and knows the contents thereof: that the said complaint is true to his own knowledge, except as to the matters herein stated to be alleged on information and belief and as to the said matters he believes them to be true.

W. MORSHEAD.

Sworn to before me at 47 Essex street Strand, London, this 8th day of October, 1902.

W. B. GLASIER,
A Commissioner for Oaths for the State of New York.

EXHIBIT "B."

Supreme Court of the State of New York, City and County of New York.

WALTER MORSHEAD, on Behalf of the Stockholders of the Central Pacific Railroad Company, Plaintiff,
against
CHARLES H. TWEED, ISAAC E. GATES, and ARABELLA HUNTINGTON, as Executors of Collis P. Huntington, and The Central Pacific Railroad Company, Defendants.

Isaac E. Gates, as executor of Collis P. Huntington, one of the defendants in the above entitled action, appearing therein by Max-

well Evarts, his attorney, answers the complaint of the plaintiff therein as follows:

First. He has no knowledge nor information sufficient to form a belief, as to the allegations contained in subdivision I of the complaint or any thereof, and controverts the same and each of them, except that he admits that Arabella D. Huntington, Charles H. Tweed and himself, are the duly qualified executors of the estate of Collis P. Huntington, and that the Central Pacific Railroad Company is a foreign railroad corporation, created by and organized under the laws of the State of California.

Second. He denies that he, or his co-defendant Charles H. Tweed, is now an officer of the Central Pacific Railroad Company, and he has no knowledge nor information sufficient to form a belief, as to the other allegations contained in subdivision II of said com-
72 plaint or any of them, and therefore controverts the same and each of them, except that he admits upon information and belief, that the Central Pacific Railroad Company has not instituted any legal proceedings against the executors of the estate of Collis P. Huntington, and that the said Huntington, during a portion of his lifetime, was an officer and director of the Central Pacific Railroad Company, and that this defendant Isaac E. Gates was an officer of said railroad company from 1889 to 1898 (except perhaps for a single year).

Third. He denies upon information and belief, that any loans or subsidies to the Central Pacific Railroad Company from the United States of America amounted in the aggregate to thirty millions of dollars in value or any such sum.

Fourth. Upon information and belief, he denies the allegations contained in subdivision IV of the complaint and each of them, except that he admits that the said Collis P. Huntington, Leland Stanford, Charles Crocker and Mark Hopkins, were directors and officers of the said Central Pacific Railroad Company, and except that he admits that the said Collis P. Huntington was the financial agent of the Central Pacific Railroad Company in New York city and Washington D. C. and upon information and belief, he avers that the board of directors of the Central Pacific Railroad Company was always in control of the Central Pacific Railroad Company and its corporate affairs.

Fifth. Upon information and belief, he denies the allegations contained in subdivision V of said complaint and each of them, except that he admits that said Huntington, Stanford, Crocker and Hopkins organized or caused to be organized certain companies known as the Contract & Finance Company, the Western
73 Development Company, the Pacific Improvement Company, and the Rocky Mountain Coal & Iron Company, and that the said Huntington, Stanford, Crocker and Hopkins were stockholders in said companies, and as such stockholders were interested in the results of the contracts made between the Central Pacific Railroad Company and said companies hereinbefore mentioned.

Sixth. Upon information and belief, he denies the allegations contained in subdivision VI of said complaint and each thereof.

Seventh. Upon information and belief, he denies the allegations contained in subdivision VII of said complaint and each of them, except that he admits and avers upon information and belief, that Mark Hopkins died in the year 1878, Charles Crocker in the year 1888 and Leland Stanford in the year 1893.

Eighth. And this defendant further answering upon information and belief, says, that long prior to the institution of this action, or any purchase by the plaintiff of any stock of the Central Pacific Railroad Company, the Central Pacific Railroad Company at meetings of its stockholders duly called and held, and without dissentient vote, approved, ratified and confirmed the acts and proceedings of its board of directors, in respect to making or carrying into effect any contracts made between the Central Pacific Railroad Company, and any of the other companies referred to in said complaint, and all acts and doings of C. P. Huntington, Leland Stanford, Charles Crocker, Mark Hopkins and their associates, while acting as directors of the Central Pacific Railroad Company.

Ninth. And this defendant further answering upon information and belief, by way of a further and separate defense to said action, says, that any cause of action which may have accrued for or
74 in respect of any of the matters referred to in the complaint, accrued more than six years before the institution of this action, and is barred by the statutes of limitations of the State of New York.

Tenth. And this defendant, further answering upon information and belief, says, by way of further and separate defense to said action, that any cause of action which may have accrued for or in respect of any of the matters referred to in the complaint, accrued more than ten years before the institution of this action, and is barred by the statute of limitations of the State of New York.

Eleventh. This defendant further answering, specifically denies all charges contained in the complaint herein of fraud, collusion, or violation of duty or improper action on the part of said Huntington, Stanford, Crocker and Hopkins, on account of the contracts between the Central Pacific Railroad Company, and other corporations referred to or intended to be referred to in the complaint or otherwise.

Wherefore, this defendant prays that the said complaint may be dismissed with costs.

MAXWELL EVARTS,
Attorney for Defendant, I. E. Gates.

23 Broad street, New York city, Borough of Manhattan.

STATE OF NEW YORK, }
City and County of New York, } ss:

Isaac E. Gates, being duly sworn, deposes and says, that he is one of the executors of the estate of Collis P. Huntington, deceased, and

one of the defendants in the above entitled action. That he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

I. E. GATES.

Subscribed and sworn to before me this 5th day of December, 1902.

[NOTARIAL SEAL.] CHARLES FRANKLIN,
Notary Public (127), *New York County.*

75 At a special term of the supreme court held at the court house in the city of Watertown, N. Y., June 9th, 1903.
Present: Hon. M. L. Wright, justice presiding.

Supreme Court, Jefferson County.

HIRAM REMINGTON
vs.
CENTRAL PACIFIC RAILROAD COMPANY.

A motion having been made to set aside the service of the summons in the above-entitled action, and now coming on for argument and after hearing Henry Purcell, of counsel for the defendant, in support of said motion, and John N. Carlisle, Esq. of counsel for the plaintiff, in opposition thereto, and counsel for the defendant having asked that defendant be permitted to serve additional affidavits in support of said motion, it is

Ordered, that the defendant may serve such additional affidavits on the plaintiff's attorneys on or before July 1st, 1903, and that said motion be postponed and heard at special term, to be held by Mr. Justice Andrews at Syracuse, N. Y., July 11th, 1903.

Enter.
M. L. W.
J. S. C.

76 Supreme Court.

HIRAM REMINGTON
vs.
THE CENTRAL PACIFIC RAILROAD COMPANY.

It is hereby stipulated, that the motion made in the above entitled action for Utica special term on May 16th, 1903, be continued, by stipulation, to the Jefferson special term appointed to be held at the court house in the city of Watertown, N. Y., on June 9th, 1903,

with the same force and effect as if the motion had originally been noticed for hearing at such term.

Dated, May 25th, 1903.

BROWN, CARLISLE & HUGO,
Plaintiff's Attorneys.
PURCELL, WALKER & BURNS,
Defendant's Attorneys for the Purposes of the Motion.

77 STATE OF NEW YORK,
Office of Secretary of State.

ALBANY, *June* 1, 1903.

I hereby certify that I have made diligent examination in this office for a statement under section 16, of the general corporation law and a designation by the Central Pacific Railroad Company of a person upon whom summons may be served in this State pursuant to section 432 of the Code of Civil Procedure (the custody of such designation, if any such there be, legally belonging to me,) and that upon such examination I find no such statement or designation by said corporation on file in this office. I further certify that no certificate of authority authorizing said corporation to do business in this State, has been issued.

Witness my hand and the seal of office of the secretary of state, at the city of Albany, the day and year first above written.

[SEAL.] HORACE G. TENANT,
Second Deputy Secretary of State.

78 In Supreme Court, County of Jefferson.

HIRAM REMINGTON, Plaintiff,
against
CENTRAL PACIFIC RAILROAD COMPANY, Defendant.

STATE OF NEW YORK,
County of New York, } *ss:*

Ellis L. Aldrich, being duly sworn, says that he resides at the city of New York, N. Y., and is over the age of twenty-one years. That on the 10th day of April, 1903, he personally served a copy of the annexed summons upon J. C. Stubbs at 120 Broadway in the borough of Manhattan, city of New York, N. Y., by personally delivering to and leaving with the said J. C. Stubbs a true copy of the said summons.

That as deponent is informed and verily believes, the said defendant, Central Pacific Railroad Company, is a foreign corporation, and that the said J. C. Stubbs is and was at the time of said service a director of The Central Pacific Railroad Company the defendant named in the above entitled action.

That deponent further says that he used due diligence to obtain service of the said summons upon an officer of said defendant within the State of New York, but that no president, treasurer or secretary or officers performing corresponding functions under another name could be found by deponent within the State of New York.

That deponent has called at the office of the Southern Pacific Railroad Company in the borough of Manhattan, city of New York, N. Y., and was there informed that that was also the office of the defendant, Central Pacific Railroad Company. That deponent was further informed at the said office that none of the officers
79 of the defendant, Central Pacific Railroad Company, resided or had his place of business in the State of New York, but that all of the officers of the said Central Pacific Railroad Company resided and had their places of business in the western part of the United States without the State of New York on the 10th day of April, when the said service was made.

ELLIS L. ALDRICH.

Sworn to before me this 15th day of May, 1903.

FREDERICK C. SIMMS.
Notary Public, No. 324, New York County.

80 STATE OF NEW YORK:

Supreme Court, Jefferson County.

HIRAM REMINGTON, Plaintiff,
against
CENTRAL PACIFIC RAILROAD COMPANY, Defendant.

STATE OF NEW YORK,
City and County of New York, } ss:

Ellis L. Aldrich being duly sworn deposes and says that he resides at the city of New York, New York, and is over the age of twenty-one years. That on the 10th day of April, 1903, he personally served the annexed summons in the above entitled action upon the defendant, Central Pacific Railroad Company, which as deponent is informed and verily believes is a foreign corporation, by personally delivering to and leaving with J. C. Stubbs, who as deponent is informed and verily believes was then a director of the said corporation, a true copy of the said summons at 120 Broadway in the borough of Manhattan, city of New York, N. Y.; that at the time deponent served the said summons as aforesaid he knew the said Central Pacific Railroad Company to be the same person mentioned and described in the said summons as defendant therein.

The deponent further says that before making the service on the

said J. C. Stubbs as director of the said defendant, he was informed by Brown, Carlisle and Hugo, plaintiff's attorneys, that from certain investigations made on behalf of the plaintiff by F. H. Remington, it appeared that all of the officers of the said defendant, Central Pacific Railroad Company, resided in San Francisco; that
81 J. L. Wilcutt, a secretary of the Central Pacific Railroad Company and N. T. Smith, treasurer of the Central Pacific Railroad Company, might be in New York city during the early part of April to attend a conference of persons representing the Southern Pacific Railroad Company with which they were connected. That on or about the 6th day of April, 1903, deponent sent Andrew Hunter, whose affidavit is hereto attached, to enquire at the office of the Southern Pacific Railroad Company, which is also the office of the Central Pacific Railroad Company, for J. L. Wilcutt and N. T. Smith, but that the said Andrew Hunter was there advised that the said Wilcutt and Smith were not expected in New York and that there was nothing to bring them here; that they very seldom came to New York from San Francisco.

That deponent on the 10th day of April, learned that J. C. Stubbs who as he was informed and verily believes was at that time a director in the Central Pacific Railroad Company, was in New York for a day and deponent thereupon served him as aforesaid.

That subsequently on the 13th day of May, 1903, deponent called at the office of the Central Pacific Railroad Company at 120 Broadway, borough of Manhattan, city of New York, and was there told by a person in the said office that all of the officers of the Central Pacific Railroad Company, on the 10th day of April, 1903, resided and had their places of business in the western part of the United States, without the State of New York, and that there were on the said 10th day of April, 1903, no persons within the State of New York, performing corresponding functions to the president, treasurer or secretary of the said Central Pacific Railroad Company under another name. That deponent did not search for a person designated under the second subdivision of section 432 of the Code of Civil Procedure for the purpose of serving said summons upon said person for the reason that no such designation had been made by
82 the said defendant as deponent is informed and verily believes.

ELLIS L. ALDRICH.

Subscribed and sworn to before me this 6th day of June, 1903.

FRANCIS A. HUNEKEN,
Commissioner of Deeds for New York City.

83 STATE OF NEW YORK:

Supreme Court, Jefferson County.

HIRAM REMINGTON, Plaintiff,
against
CENTRAL PACIFIC RAILROAD COMPANY, Defendant.

STATE OF NEW YORK,
County of New York, City of New York, } ss:

Andrew Hunter, being duly sworn, says, that on or about the 6th day of April, 1903, he was employed by Aldrich & Vandewalker, to make service of the summons in the above entitled action upon the defendant therein; that he proceeded on that day with said summons in his possession to the office of the Southern Pacific Railroad Company at 120 Broadway, Manhattan, New York city, which said office is also the office of the Central Pacific railroad, in New York, and made inquiries in said office for J. C. Wilcutt the secretary and N. T. Smith the treasurer of said Central Pacific Railroad Company but that deponent was there informed that neither said Wilcutt nor said Smith were in New York, but that they resided and had their places of business in the city of San Francisco, in the State of California; that neither of them were expected to come to New York and that they very seldom came East from San Francisco; that deponent reported the result of his effort to serve said paper to said Aldrich & Vandewalker.

ANDREW HUNTER.

Sworn to before me this 8th day of June, 1903.

WILLARD S. ALLEN,
Notary Public, New York County.

84 STATE OF NEW YORK:

In Supreme Court, County of Jefferson.

HIRAM REMINGTON, Plaintiff,
against
CENTRAL PACIFIC RAILROAD COMPANY, Defendant.

COUNTY OF NEW YORK, ss:

Augustus T. Gillender, being duly sworn, says that he is an attorney and counsellor at law with offices at 141 Broadway in the borough of Manhattan, city of New York; that he is also attorney in fact for G. Emily Reynolds, the owner of the certificate of stock of the Central Pacific Railroad Company, a copy whereof is hereto

attached; that as such attorney in fact he has now in his possession the said original certificate; that he has carefully examined the copy of the said certificate hereto attached and that the same is a true copy of the original certificate in his possession.

AUG. T. GILLENDER.

Sworn to before me this 26th day of June, 1903.

KATHERINE MacMAHON,
Notary Public, 116, *N. Y.*

85 No. D. 66484. 10 shares.

This is to certify that G. Emily Reynolds, is entitled to ten (10) shares of one hundred dollars each in the capital stock of the Central Pacific Railroad Company, transferable only on the books of the said company at the city of New York upon the surrender of this certificate and all unpaid dividend warrants belonging thereto. This certificate is not valid without the signature of the registrar and transfer agent.

Any dividends that may be declared or become payable upon the stock represented by this certificate will be paid only upon presentation and surrender of the annexed dividend warrants corresponding in number with the dividend so declared and to the bearer of said warrants.

In witness whereof the said company has caused this certificate to be signed by its president and secretary this 15th day of July, 1890, and to be countersigned by its registrar and transfer agent.

CHAS. CROCKER,
3d Vice President.

E. H. MILLER, JR., *Secretary.*

Countersigned this 16th day of July, 1890.

GEO. WATKINS,
Transfer Agent.

Countersigned and prior certificate cancelled this 16th day of July, 1890.

FOURTH NATIONAL BANK OF NEW YORK, *Registrar*,
By CHAS. PATTERSON, *Ca.*

Central Pacific Railroad Company.

Dividend Warrant No. 29.

The bearer is entitled to the twenty-ninth dividend on ten (10) shares of the capital stock of this company represented by certificate No. D. 66484, payable in the city of New York, and elsewhere as may be designated by said company.

E. H. MILLER, JR.

Warrants No. 29, 30, 31, 32, 33 & 34 are attached.

For value received —— —— hereby sell, assign and transfer unto —— —— — shares of the stock represented by the within certificate- and do- hereby irrevocably constitute and appoint —— —— attorney to transfer the said stock on the books of the within named company with full power of substitution in the premises.

Dated —— 18—.

—— ——.

In the presence of

—— ——.

86 In Supreme Court, Jefferson County.

HIRAM REMINGTON
v.
CENTRAL PACIFIC RAILROAD COMPANY.

STATE OF NEW YORK, *County of Kings,* } *ss:*

George Watkins, being duly sworn, says that he resides at No. 656 Nostrand avenue in the borough of Brooklyn in the city and State of New York, and that from about May, 1882, to about 1897 he acted as the transfer agent in New York city, in the State of New York, for the Central Pacific Railroad Company. That the office of said company was, during that period, in the Mills building, Broad street, in said city, that said office was the general financial office of said company in New York city.

That the said company kept in said office the necessary books for the transfer of its stock, and that deponent had charge of said books. That deponent, acting as such transfer agent, would receive certificates of stock of said company, properly endorsed and assigned, would note the transfer of said certificate on the transfer register, and would thereupon give to the person surrendering said certificate a new certificate or certificates for a like amount of stock in the place of said certificate so surrendered.

That said new certificates were registered by the Fourth National Bank of the City of New York, which acted as registrar of said Central Pacific Railroad Company during said period, and were dated and countersigned by deponent as such transfer agent.

GEO. WATKINS.

Sworn to before me this 2nd day of July, 1903.

[SEAL.] WM. G. ANDERSON,
Notary Public, 76, Kings Co., N. Y.

87 In Supreme Court, Jefferson County.

HIRAM REMINGTON
vs.
CENTRAL PACIFIC RAILROAD COMPANY.

STATE OF NEW YORK, *City & County of New York,* } ss:

Charles H. Patterson, being duly sworn, says he resides at the city of New York, and is the cashier of the Fourth National Bank of said City of New York, and has acted first as assistant cashier and then as cashier of said bank since 1882.

Deponent further says that when he became connected with said bank in 1882, the said Fourth national bank was acting as registrar of the stock of the Central Pacific Railroad Company, and continued to act in that capacity down to about the year 1897, and during said years as aforesaid, the said Central Pacific Railroad Company maintained an office at No. 15 Broad street in the city of New York, and that it employed at that office one George Watkins, as its New York transfer agent, and that I. E. Gates, a vice-president of said Central Pacific Railroad Company, was also one of the occupants of said office. That most of the certificates registered by the said Fourth National Bank of the City of New York came from said office No. 15 Broad street, countersigned by the said George Watkins, and that when said certificates had been registered by said bank they were returned by it to the said office of the Central Pacific Railroad Company at No. 15 Broad street, New York city.

Deponent further says that he has examined the books of the Fourth national bank as aforesaid, and finds items entered in said books showing that said bank acted as registrar for the said Central Pacific Railroad Company from about 1872 down to about 1897.

CHARLES H. PATTERSON.

Sworn to before me this 2nd day of July, 1903.

[SEAL.] R. A. PIPER,
Notary Public, Kings County.

Certificate filed in New York county.

88 STATE OF NEW YORK:

Supreme Court, Jefferson County.

HIRAM REMINGTON, Plaintiff,
against
CENTRAL PACIFIC RAILROAD COMPANY, Defendant.

STATE OF WISCONSIN, *Milwaukee County*, } ss:

Frederick H. Remington, being first duly sworn, on oath deposes and says that he is counsel for the plaintiff in the above-entitled action, and the same person who made affidavits in said action dated the 16th day of May, 1903, and the 28th day of May, 1903; that the false and fraudulent representations made by the defendant and caused to be published by the defendant mentioned in said affidavit of affiant dated the 16th day of May, 1903, were contained in a report or article concerning the Central Pacific Railroad Company and entitled "Central Pacific railroad," published in a book entitled "Manual of the Railroads of the United States for 1880," "By Henry V. Poor," "13th annual number," "New York, H. V. and H. W. Poor, 19 Broad street;" that said book was copyrighted by said H. V. and H. W. Poor and was published by them in the city of New York, State of New York, in the year 1880; that said manual consists of a compilation of information concerning the various railroad companies of the United States which has been published annually in the city of New York since 1867, and is a standard publication which has at all times since its first publication been generally used by dealers in railroad stocks for the purpose of obtaining information concerning the affairs and financial condition of the various railroads in the United States; that among other things the said article concerning the Central Pacific railroad contained the following:

89 "*General Balance December 31st*, 1879.

Railroad and appurtenances	$135,021,029.02
Rolling stock	3,030,468.77
Real estate and buildings	2,549,297.52
Materials and fuel	2,226,428.14
Stocks and bonds	982,184.68
Bills receivable	1,021,363.36
Accounts	5,423,693.89
Cash on hand	540,966.76
Sinking fund	4,068,662.90
Other property and assets	1,489,644.82
	$161,353,739.86

Capital stock	$54,275,500.00
Funded debt	57,030,000.00
Bills payable	4,212,960.86
Other liabilities	1,131,605.39
Current accounts	1,465,455.00
Profit and loss	15,382,538.61
U. S. subsidy bonds	27,855,680.00
	$161,353,739.86"

That the plaintiff claims that the said general balance was false and fraudulent in omitting entirely an item of $19,271,111.41 for accrued interest on the Government loan of subsidy bonds, in including the item showing a profit, to-wit: "Profit and loss $15,382,538.61;" and in including in the items "Railroad appurtenances, $135,021,029.02" and "Capital stock, $54,275,500." about $52,000,000 of stock for which the company had received no consideration and which had been issued in violation of law and charged to railroad and appurtenances and credited to capital stock as if fully paid; that if the said item of $19,271,111.41 accrued interest had been included in said general balance it would have more than offset the said item showing a profit of over $15,000,000, and would have shown a loss of about $4,000,000, which would have appeared upon the other side of the balance sheet; that affiant expects that the plaintiff will be able to prove upon the trial of this action beyond any controversy that the said item of accrued interest was owing and unpaid by the defendant to the United States on the 31st day of December, 1879, and expects to be able to prove that said item of about $52,000,000 of stock was wholly unpaid and fictitious; that the plaintiff also expects to be able to
90 prove upon such trial that the said article concerning the Central Pacific Railroad Company published as aforesaid was furnished by the defendant to the editor and publishers of said manual for the purpose of having the same published in said manual and knowing that the same would be so published; that about the 1st of January, 1903, affiant called at the office of the publishers of said Poor's Manual in the city of New York and inquired of the person in charge of said office if all information contained in the manual was received directly from the various companies concerning which the information was given, and said person then informed affiant that such information in all cases was received directly from the respective companies unless it was otherwise noted in the articles concerning the respective companies; that there is nothing in the said article concerning the Central Pacific Railroad Company indicating that it was not furnished by the defendant, but upon the other hand there are certain things in the said manual indicating that the said information contained in said article was furnished by the defendant; among other things, it appears in the said article that certain lines of road were leased to the defendant by other companies, and in the articles in said manual concerning several of said

leased roads, under the head of "Operations for the year ending December 31, 1879," is the following: "Included in lessee's returns;" that in various places throughout the manual, in articles concerning other railroad companies, are statements showing that the companies refused to furnish information, or had failed to furnish information; that there is nothing of this kind in the said article concerning the Central Pacific Railroad Company, and the information in said article is given in such detail that to all appearances it could have been furnished only by the defendant.

That the foregoing are some of the reasons why affiant expects that the plaintiff will be able to establish upon the trial that
91 the said article was furnished by the defendant to the editor and publishers of said Poor's Manual to be published in said 13th annual number of said manual; that prior to the purchase of capital stock of the defendant corporation by the plaintiff, the plaintiff consulted with affiant in regard thereto, and affiant knows that the plaintiff before making such purchases consulted the said volume of Poor's Manual and read the said article concerning the Central Pacific Railroal Company, and particularly the said general balance, and that the plaintiff relied upon the information contained in said article and especially upon said general balance, in making the said purchases;

That from early in January, 1903, until the service of the summons in this action upon J. C. Stubbs, a director of the defendant, on the 10th day of April, 1903, affiant made diligent search and inquiry for the president, vice-president, secretary, assistant secretary, treasurer and assistant treasurer of the defendant for the purpose of finding one of said officers in the State of New York and having the summons in said action served upon such officer, but affiant was unable to find said officers or any thereof in the State of New York; that affiant made such search and inquiry by inquiring of various persons in New York city who would be liable to know the whereabouts of said officers and by corresponding with an attorney at law residing at San Francisco, California, who made inquiries concerning such officers in said city of San Francisco.

FREDERICK H. REMINGTON.

Subscribed and sworn to before me this 2nd day of July, 1903.

JOHN H. HURLEY,

[SEAL.] *Notary Public, Milwaukee County, Wisconsin.*

My commission expires August 7, 1904.

STATE OF WISCONSIN, *County of Milwaukee,* } ss:

Office of the clerk of the circuit court.

I, A. A. Wieber, clerk of the circuit court of the county of Milwaukee, in the State of Wisconsin, the said court being a
92 court of record and having a seal, do hereby certify that John H. Hurley, Esquire, whose name appears subscribed to the annexed instrument, was at the date thereof a notary public within and for said State, residing in said county, duly appointed and qualified and empowered by the laws of said State to administer oaths, take depositions, and acknowledgments of deeds, and perform such other duties as by the law of nations, or according to commercial usage may be performed by notaries public, and that to his acts and attestations as such full faith and credit is and ought to be given in court and out. I further certify that I am well acquainted with the signature and handwriting of the aforesaid notary public, and I verily believe said signature, purporting to be his, is genuine; that the seal hereto attached is a correct impression of his official seal; and that said instrument is executed and acknowledged according to the laws of the State.

In witness whereof, I have hereunto set my hand and affixed the seal of said court at Milwaukee, in said county and State, on the 2nd day of July, one thousand nine hundred and three.

A. A. WIEBER,
Clerk of Circuit Court.

[SEAL.]

93 STATE OF NEW YORK:

Supreme Court, Jefferson County.

HIRAM REMINGTON, Plaintiff,
vs.
CENTRAL PACIFIC RAILROAD COMPANY, Defendant.

STATE OF WISCONSIN, *Milwaukee County,* } ss:

Frederick H. Remington, being first duly sworn, on oath deposes and says that he is counsel for the plaintiff in the above-entitled action and the same person who made an affidavit in this action dated the 16th day of May, 1903; that the plaintiff is, and has been for many years last past, a resident of Jefferson county, State of New York; that affiant wrote the letter in the month of January, 1903, to the secretary of state of the State of New York mentioned in the said former affidavit, for the purpose of ascertaining whether there was

any person in the State of New York upon whom a summons could be served in this action, and from the early part of January, 1903, until the service of the summons in this action on J. C. Stubbs, a director of the defendant, on the 10th day of April, 1903, affiant made diligent inquiry for some officer of the defendant of the classes mentioned in the first subdivision of sec. 432 of the Code of Civil Procedure of the State of New York, who might be within the State of New York, for the purpose of having the summons in this action served upon such officer, but was unable to find any such officer of the defendant in the State of New York; that Collis P. Huntington, hereinafter mentioned, ever since the incorporation of the above-named defendant in 1861, and until his death on or about the 13th day of August, 1900, was a resident of the city of New York, State
94 of New York; that the last will and testament of said Collis P. Huntington was duly admitted to probate by the surrogate of New York county, New York, on or about the 15th day of October, 1900, and that letters testamentary were thereupon duly issued by said surrogate to the executors named in said last will and testament, to wit: Charles H. Tweed, Isaac E. Gates and Arabella Huntington; that said persons are acting as such executors and each of said persons resides in the said city of New York, and did so reside on the 10th day of April, 1903; that the said Collis P. Huntington was a director in and vice-president of the defendant corporation and financial agent of the said defendant from its incorporation in 1861 until in or about the year 1899; that at the date of the service of the summons in this action upon said J. C. Stubbs, a director of the defendant, on the 10th day of April, 1903, the above named defendant Central Pacific Railroad Company had, and still has, property within the State of New York, to wit: a large claim against the estate of said Collis P. Huntington and the executors of said last will and testament, as affiant is informed and verily believes, after having made a careful study of the facts relating to said claim; that an action is now pending and undetermined in the supreme court of the State of New York in and for New York county, wherein one Walter Morshead, a stockholder in the defendant corporation, is plaintiff, and said executors above named and said Central Pacific Railroad Company are defendants; that the said action is brought by the said Morshead on behalf of the stockholders of the Central Pacific Railroad Company; that affiant has read the pleadings and other papers in said action; that said action was commenced by service of a summons on said Isaac E. Gates, one of said executors, and on the said Central Pacific Railroad Company on the 29th day of August, 1902; that the complaint was verified by the plaintiff on October 8, 1902, and the answer of said Isaac E. Gates as such executor was verified on the 5th day
95 of December, 1902; that it appears from the complaint in said action that the said action is brought to compel the said executors to account for a large amount of profits alleged to have been made by their said decedent, Collis P. Huntington, while

acting as vice-president, director and financial agent of the said Central Pacific Railroad Company, and which are alleged in said complaint to belong to said company, and to compel the said executors to pay the said profits with interest thereon to the said Central Pacific Railroad Company for the benefit of its stockholders.

FREDERICK H. REMINGTON.

Subscribed and sworn to before me this 28th day of May, 1903.

CHAS. E. WILD,
[SEAL.] *Notary Public, Milwaukee County, Wisconsin.*

My commission expires Oct. 16, 1904.

STATE OF WISCONSIN, }
County of Milwaukee, } ss:

Office of the clerk of the circuit court.

I, A. A. Wieber, clerk of the circuit court of the county of Milwaukee, in the State of Wisconsin, the said court being a court of record and having a seal, do hereby certify that Charles E. Wild, Esquire, whose name appears subscribed to the annexed instrument, was, at the date thereof, a notary public within and for said State, residing in said county, duly appointed and qualified and empowered by the laws of said State to administer oaths, take depositions and acknowledgments of deeds, and perform such other duties as by the laws of nations, or according to commercial usage, may be performed by notaries public, and that to his acts and attestations as such full faith and credit is and ought to be given in court and out. I further certify that I am well acquainted with the signature and handwriting of the aforesaid notary public, and I verily believe said signature, purporting to be his, is genuine; that the seal hereto attached is a correct impression of his official seal; and that said instrument is executed and acknowledged according to the laws of the State.

In witness whereof I have hereunto set my hand and affixed the seal of said court at Milwaukee, in said county and State, on the 28th day of May, one thousand nine hundred and three.

A. A. WIEBER,
Clerk of Circuit Court.

96 STATE OF NEW YORK:

Supreme Court, Jefferson County.

HIRAM REMINGTON, Plaintiff,
vs.
CENTRAL PACIFIC RAILROAD COMPANY, Defendant.

STATE OF NEW YORK, *Jefferson County,* } ss.:

Hiram Remington, being first duly sworn, on oath deposes and says that he is the plaintiff in the above entitled action; that the shares of capital stock in the defendant corporation, certificates for which had been issued by the above named defendant and transferred to the plaintiff, as stated in plaintiff's affidavit herein, dated the 19th day of May, 1903, were transferred to the plaintiff in the manner hereinafter stated; that the certificates for said stock issued by the defendant had printed upon the back of each thereof a blank assignment and power of attorney substantially in the following form, to-wit:

"For value received — hereby sell, assign and transfer unto —— —— — shares of the stock represented by the within certificate and do irrevocably constitute and appoint —— —— attorney to transfer the said stock on the books of the within named company with full power of substitution in the premises.

Dated —— — 18—

—— ——.

In presence of
—— ——."

That the plaintiff purchased the said stock in the open stock market in the city of New York at the market prices at the times of the respective purchases, through the agency of others, and paid for the same in said city of New York upon the delivery to affiant or his agents in said city of New York of said certificates representing said stock; that when the said certificates of stock were delivered as aforesaid,
97 the blank assignments and powers of attorney on the back thereof, as aforesaid, were signed in blank by the persons to whom such certificates had been issued by the defendant; that the plaintiff did not have the said stock transferred to him on the books of the defendant, but held the said certificates with the said blank assignments and powers of attorney endorsed thereon, and signed as aforesaid until the said stock was sold by the plaintiff, when he caused the said certificates with said assignments and powers of attorney to be delivered to those who purchased said stock from him, in the same form in which he received them, with the

exception that certain dividend warrants which had been paid to plaintiff had been detached therefrom; that said certificates had attached thereto certain dividend warrants which were numbered and had been attached to said certificates of stock by the defendant for the purpose of enabling a purchaser of such stock to collect from the defendant any dividends which might be declared upon such stock by detaching and surrendering to the defendant the dividend warrants corresponding in number with the dividends so declared, without having the stock transferred to the name of such purchaser upon the books of the defendant; that while the plaintiff held the said stock purchased as aforesaid, certain dividends were declared thereon by the defendant and the same were paid by the defendant to plaintiff's agents who collected the same upon the surrender to the defendant of the dividend warrants corresponding in number with the number of such dividends, which warrants had been detached from said certificates; that the plaintiff does not now hold any of said stock; but sold the same some time before the commencement of this action at the then market prices for the same which prices were very much less than the prices paid by the plaintiff therefor and the plaintiff lost the difference in such prices besides interest, and has been damaged in the amount of such difference and interest; that the plaintiff claims and expects to prove upon the trial of this action that such loss and damage was caused by the frauds of the defendant; that the said frauds are
98 briefly set forth in the affidavits of Frederick H. Remington in this action dated, respectively, May 16th, 1903, and the 2nd day of July, 1903, and said frauds will be more particularly and fully set forth in the complaint in this action; that affiant did not discover the facts constituting the said frauds or any of them until long after the sale and transfer of said stock and certificates by him, and not until in or about the month of December, 1902; that in making the said purchases of said stock, the plaintiff relied upon all the stock of the defendant corporation having been fully paid and duly and legally issued, and relied upon the articles entitled "Central Pacific Railroad" published in the book entitled "Manual of the Railroads of the United States for 1880, by Henry V. Poor," "13th annual number," "New York, H. V. & H. W. Poor," 19 Broad street," and relied particularly upon the "General balance December 31st, 1879" included in said article, which general balance has been copied into the said affidavit of Frederick H. Remington herein, dated July 2nd, 1903, and appears on the 2nd page of said affidavit; that plaintiff had carefully read the said article in said manual before purchasing the said stock, and at the times of purchasing the said stock verily believed that the said article was in all respects true, and did not discover that the said article did not state the truth until in or about the month of December, 1902; that the plaintiff has been, at the several times mentioned in this affidavit, and still is, a resident of Jefferson county State of New York, and the defendant has at all times since its in

corporation been a non-resident of the State of New York; that the plaintiff expects to be able to prove upon the trial of this action the purchases and sale of said stock as aforesaid, the frauds of the defendant, that the plaintiff was damaged thereby, and all the facts constituting a good cause of action in favor of the plaintiff and against defendant, but objects and protests against the trial of the merits of the action upon affidavits upon a preliminary motion, and claims a right to a trial of this action upon oral testimony and documentary evidence to be duly produced in court after the plaintiff shall have served his complaint and the defendant shall have served its answer herein, or to a trial of any issue of law if the defendant shall elect to demur to such complaint when served.

HIRAM REMINGTON.

Subscribed and sworn to before me this 6th day of July, 1903.

LUCILLE R. BARON,
Notary Public, Jefferson County, New York.

99 STATE OF NEW YORK:

Supreme Court, Jefferson County.

HIRAM REMINGTON, Plaintiff,
vs.
CENTRAL PACIFIC RAILROAD COMPANY, Defendant.

STATE OF NEW YORK,
Jefferson County, City of Watertown, } ss:

Hiram Remington, being first duly sworn, on oath deposes and says that he is the plaintiff in the above entitled action; that the cause of action for which this action has been commenced arose in the State of New York; that said action is brought to recover damages arising and resulting from the purchase by the plaintiff of certain shares of the capital stock in the defendant corporation, certificates for which stock were issued by the defendant and transferred to the plaintiff upon the purchase of the same by him; that affiant purchased the said stock in the city of New York, State of New York, and paid for it in said city; and the said certificates of stock were transferred to him in said city; that the reason the plaintiff's complaint in said action is not presented upon the hearing of the motion made by the defendant to set aside the service of the summons in said action is that it is necessary for the person who is now preparing the said complaint to examine a large mass of documents and evidence contained in other matters in which the defendant was interested, for the purpose of properly drawing the complaint in this action and making the allegations thereof accurate

and in accordance with the facts; and the person so preparing the said complaint has not yet had sufficient time to prepare it.

HIRAM REMINGTON.

Subscribed and sworn to before me this 19th day of May, A. D. 1903.

LUCILLE R. BARON,
Com. of Deeds, City of Watertown, N. Y.

100 STATE OF NEW YORK:

Supreme Court, Jefferson County.

HIRAM REMINGTON, Plaintiff,
against
CENTRAL PACIFIC RAILROAD COMPANY, Defendant.

STATE OF WISCONSIN,
Milwaukee County, } ss:

Frederick H. Remington, being first duly sworn, on oath deposes and says that he is an attorney and counselor-at-law duly admitted to practice as such in all the courts of the State of New York, and also in all the courts of the State of Wisconsin, and at present resides and practices law at the city of Milwaukee, Wisconsin; that he is a son of Hiram Remington, the plaintiff in the above entitled action, and is familiar with his business affairs; that he is counsel for the plaintiff in said action.

That the defendant, Central Pacific Railroad Company, is a railroad corporation duly created, organized and existing under and by virtue of the laws of the State of California, and from the time of its incorporation until in or about the year 1900 kept and maintained an office for the transaction of business of said corporation in the city of New York, State of New York. That during part of said time the office of said company in the city of New York was at No. 23 Broad street, in said city, as any one may ascertain from directories of New York city or from Poor's Manual for 1899 and prior years; that said Poor's Manual is a book consisting of a compilation of information concerning the various railroad companies in the United States, which has been published annually in the
101 city of New York by H. V. and H. W. Poor for many years, and is a standard publication generally used by dealers in stocks.

That the cause of action for which the above entitled action is brought arose in the State of New York during the period that the said defendant maintained an office in said city of New York as aforesaid; that this action is brought for the purpose of recovering damages from the said Central Pacific Railroad Company, for issu

ing illegal and void certificates of the capital stock of said Central Pacific Railroad Company, and for making and causing to be published false and fraudulent representations concerning the capital stock represented by said certificates and concerning the affairs and condition of said Central Pacific Railroad Company, and concerning the consideration paid to said company for said stock, for the purpose of giving said capital stock represented by said certificates a fictitious value upon the market, and for the purpose of inducing the public to purchase said stock represented by said certificates; and upon the ground that said illegal, fraudulent and void certificates of stock were issued by the defendant in the State of New York, and that said false and fraudulent representations were made and published by the defendant in the State of New York; and upon the ground that the plaintiff, Hiram Remington, is and all the times herein mentioned was a resident of the State of New York, and that the said plaintiff, believing the said certificates of stock to be legal and properly issued, and believing that full consideration had been paid to the said defendant, Central Pacific Railroad Company, therefor, and relying upon the said certificates of stock being legal, valid and properly issued, and relying upon the said representations made as aforesaid being true, and induced by said belief and by said representations, purchased a large amount of said stock represented by said illegal and fraudulent certificates, which purchases were made by him in the city of New York, State of New York, and paid large sums of money for the same, which
102 payments were made by him in the city of New York, State of New York, and such illegal, fraudulent and void certificates were thereupon transferred to him in the city of New York, State of New York. And upon the ground that the said certificates were in fact worthless and well known to the defendant to be worthless when issued as aforesaid and when said representations were made and published as aforesaid; and that by reason of the said illegal, fraudulent and void issue of said certificates by the defendant, and by reason of said false and fraudulent representations, those of the same so purchased by the plaintiff greatly depreciated while they were held by him, and the plaintiff lost a large amount of money by reason of having purchased the said fraudulent and void certificates of stock as aforesaid, and was damaged in the amount of said loss by reason of the facts herein set forth and which will be more fully set forth in the complaint in this action.

That all the certificates aforesaid were issued by the defendant, Central Pacific Railroad Company, in the city of New York, State of New York.

That the defendant, Central Pacific Railroad Company, kept its books for the issue and transfer of capital stock of said company in the city of New York, and did so at the time of the issuing of the certificates aforesaid.

Affiant further says that he knows that said representations were published in the State of New York; that annexed hereto, marked

Exhibit "A" and made a part of this affidavit, is the form of stock certificate and dividend warrants which were issued by the defendant during the time it was doing business in the city of New York, State of New York, as aforesaid; that affiant copied said form from a stock certificate that had been issued by the defendant and is in the words of such certificate issued by it as aforesaid, except the blank spaces left therein; and with that exception, and with the exception that the name of the cashier of the Fourth national
103 bank (which was difficult to decipher) may not be correctly copied, the said Exhibit "A" is an exact copy of said stock certificate and dividend warrant thereto attached and the blank assignment endorsed thereon.

That it appears from said stock certificate and from said dividend warrants attached thereto that the capital stock of the said Central Pacific Railroad Company is transferable only on the books of said company in the city of New York; that it was countersigned by the Fourth National Bank of New York, registrar, and by George Watkins, transfer agent; and that the said warrants attached to said certificate were payable in said city of New York or elsewhere as may be designated by said company.

That in the month of January, 1903, affiant wrote to the secretary of state of the State of New York, at Albany, New York, for the purpose af ascertaining whether the said Central Pacific Railroad Company had designated any person in the State of New York upon whom summons could be served, pursuant to the provisions of the Code of Civil Procedure of the State of New York, and in reply to such letter affiant received from said secretary of state the communication hereto annexed marked Exhibit "B," from which it appears that said secretary of state was unable, after diligent examination in his office, to find any designation by the Central Pacific Railroad Company of a person upon whom summons may be served in the State of New York pursuant to section 432 of the Code of Civil Procedure of said State.

FREDERICK H. REMINGTON.

Subscribed and sworn to before me this 16th day of May, A. D. 1903.

[SEAL.] CHARLES E. WILD,
Notary Public, Milwaukee County, Wisconsin.

104 STATE OF WISCONSIN, } ss:
County of Milwaukee, }

Office of the clerk of the circuit court.

I, A. A. Wieber, clerk of the circuit court of the county of Milwaukee, in the State of Wisconsin, the said court being a court of record and having a seal, do hereby certify that Chas. E. Wild,

Esquire, whose name appeared subscribed to the annexed instrument, was, at the date thereof, a notary public within and for said State, residing in said county, duly appointed and qualified and empowered by the laws of said State to administer oaths, take depositions and acknowledgments of deeds, and perfrom such other duties as by the law of nations, or according to commercial usage, may be performed by notaries public, and that to his acts and attestations as such full faith and credit *is* and ought to be given in court and out. I further certify that I am well acquainted with the signature and handwriting of the aforesaid notary public, and I verily believe said signature purporting to be his is genuine; that the seal hereto attached is a correct impression of his official seal; and that said instrument is executed and acknowledged according to the laws of the State.

In witness whereof I have hereunto set my hand and affixed the seal of said court at Milwaukee, in said county and State, on the 16th day of May, one thousand nine hundred and three.

[SEAL.]

A. A. WIEBER,
Clerk of Circuit Court.

105 EXHIBIT "A."

No. D. — shares.

This is to certify that —— —— is entitled to — shares of one hundred dollars each, in the capital stock of the Central Pacific Railroad Company, transferable only on the books of the said company in the city of New York upon the surrender of this certificate and all unpaid dividend warrants belonging thereto. This certificate is not valid without the signature of the registrar and transfer agent.

Any dividends that may be declared or become payable upon the stock represented by this certificate will be paid only upon presentation and surrender of the annexed dividend warrants corresponding in number with the dividend so declared and to the bearer of said warrants.

In witness whereof the said company has caused this certificate to be signed by its president and secretary this — day of —— and to be countersigned by its registrar and transfer agent.

CHAS. CROCKER,
3rd Vice President.

E. H. MILLER, JR., *Secretary.*

Countersigned this — day of ——.

GEO. WATKINS,
Transfer Agent.

Countersigned and prior certificate cancelled this — day of ——, —.

FOURTH NATIONAL BANK OF NEW YORK, *Registrar,*
By CHAS. HATTLER, *Cr.*

Central Pacific Railroad Company.

Dividend Warrant.

No. 29.

The bearer is entitled to the twenty-ninth dividend on shares of the capital stock of this company represented by certificate No. D. Payable in the city of New York and elsewhere, as may be designated by said company.

E. H. MILLER, JR., *Sec'y.*

Warrants No. 29, 30, 31, 32, 33 & 34 attached.

For value received — hereby sell, assign and transfer unto —— —— — shares of the stock represented by the within certificate and do hereby irrevocably constitute and appoint —— —— attorney to transfer the said stock on the books of the within named company with full power of substitution in the premises.

—— ——.

Dated —— —, 18—..

In presence of

—— ——.

106 EXHIBIT "B."

STATE OF NEW YORK,
Office of the Secretary of State.

ALBANY, *Jan.* 15, 1903.

F. H. Remington, Esq., Milwaukee, Wis.

DEAR SIR: I have made diligent examination in this office for a statement under section 16 of the general corporation law and a designation by the Central Pacific Railroad Company of a person upon whom summons may be served in this State, pursuant to section 432 of the Code of Civil Procedure of said State, and upon such examination I find no such statement or designation by said corporation on file in this office.

Yours respectfully,

JOHN F. O'BRIEN,
Secretary of State.

107 STATE OF NEW YORK, SUPREME COURT, } ss:
County of Jefferson,

HIRAM REMINGTON, Plaintiff,
vs.
THE CENTRAL PACIFIC RAILROAD COMPANY, Defendant. } Affidavit.

STATE OF COLORADO, } ss:
County of Pueblo,

J. C. Stubbs, being duly sworn, deposes and says: I reside and have an office in the city of Chicago, State of Illinois, and am not a resident of the State of New York and was not on the date of the service of the summons herein on me. I have been a resident of the said city of Chicago since about July, 1901, and prior to that time was a citizen and resident of San Francisco, California, for many years. On the 10th day of April, 1903, a copy of a summons in the above entitled action was served upon me while I was in the city of New York for a few days upon business in no way connected with the business of the above named defendant. I was a director of the defendant, The Central Pacific Railroad Company, above named, at the time of the service of said summons but was not an officer thereof. The said company is a corporation organized under the laws of the State of California, and it does no business whatever in the State of New York and has no property within the said State. And I do further depose and say that I have no knowledge or information on the subject of any cause of action existing in favor of the plaintiff against the said defendant. If such a cause of action does exist I am unable to state where it arose, but as the
108 defendant has not, to my knowledge, done or transacted any business within the State of New York, I do not believe that if a cause of action exists in favor of the plaintiff against the said defendant, it arose within the said State of New York.

J. C. STUBBS.

Subscribed and sworn to before me this 2nd day of May, 1903.

MILES E. SAUNDERS,
Notary Public.

[NOTARIAL SEAL.]

Commission expires February 1st, 1905.

Certificate of Magistracy.

STATE OF COLORADO, } ss:
County of Pueblo,

I, W. T. Fairfax, county clerk and recorder in and for said county in the State aforesaid, do hereby certify that Miles G. Saunders,

whose name is subscribed to the certificate of acknowledgment of the annexed instrument, and written thereon, was at the time of taking such proof of acknowledgment a notary public in and for said county of Pueblo, duly commissioned, sworn and acting as such, and duly authorized and qualified to take the acknowledgment of deeds, administration or oaths, etc., for lands, tenements and hereditaments in said State, and his commission and authority to act are recorded in my office, it being the only office in which such record is made. And further, that I am well acquainted with his handwriting and verily believe the signature to the said proof or acknowledgment is genuine, and that said instrument is executed and acknowledged according to the laws of the State of Colorado.

In testimony whereof I have hereunto set my hand and affixed the seal of said county, at Pueblo, in said county this 2 day of May, A. D. 1903.

(Signed) W. T. FAIRFAX,
County Clerk and Recorder,

[SEAL.] By —— ——, *Deputy.*

109 Supreme Court, Jefferson County.

HIRAM REMINGTON
vs.
THE CENTRAL PACIFIC RAILWAY COMPANY.

Take notice that upon the summons herein and the affidavit of J. C. Stubbs, verified May 2nd, 1903, and a copy of which is hereto annexed and herewith served, a motion will be made at a special term of the supreme court, appointed to be held at the court house in the city of Utica, N. Y. on May 16th, 1903, at the opening of the court on that day, or as soon thereafter as counsel can be heard, for an order setting aside the service of the summons herein, on the ground that such service was irregular, defective, null and void and of no effect, or for such other or further order as may be proper, with costs of motion.

Dated May 11, 1903.

Yours, etc., PURCELL, WALKER & BURNS,
Attorneys for Defendant for Purposes of This Motion Only.

15 Washington street, Watertown, N. Y.

To Messrs. Brown, Carlisle & Hugo, plaintiff's attorneys.

110 Supreme Court, Jefferson County.

HIRAM REMINGTON
vs.
THE CENTRAL PACIFIC RAILWAY COMPANY.

Please take notice that we appear in this action for the defendant for the purpose only of making a motion herein to set aside the service of the summons in this action on the defendant.

Dated May 11th, 1903.

Yours, etc., PURCELL, WALKER & BURNS,
Attorneys for the Defendant for the Purposes Stated.

15 Washington street, Watertown, N. Y.

To Messrs. Brown, Carlisle & Hugo, Watertown, N. Y.

111 STATE OF NEW YORK:

In Supreme Court, County of Jefferson.

HIRAM REMINGTON
vs.
CENTRAL PACIFIC RAILROAD COMPANY.

To the above named defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorneys within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Trial to be held in the county of Jefferson.

BROWN, CARLISLE & HUGO,
Plaintiff's Attorneys.

Office & P. O. address, No. 8 Stone St., Watertown, N. Y.

Dated this 2nd day of April, 1903.

112 Supreme Court of the State of New York, County of Jefferson.

HIRAM REMINGTON, Plaintiff,
against
CENTRAL PACIFIC RAILROAD COMPANY, Defendant.

STATE OF NEW YORK,
County of Jefferson, } ss:

I, E. A. Chapman, clerk of said county of Jefferson, and also clerk of the supreme court for the said county, the same being a court of record, and also clerk of all the courts of record of said county, do hereby certify the above and foregoing to be full, true and correct copies of the record and the whole thereof in the above entitled suit or action heretofore pending in said supreme court wherein Hiram Remington is plaintiff and Central Pacific Railroad Company is defendant; said record consisting of the summons in said suit and the following affidavits:

J. C. Stubbs, verified May 2, 1903; George Watkins, verified June 24, 1903; Maxwell Evarts, verified June 26, 1903; Isaac E. Gates, verified June 24th, 1903; three affidavits of Frederick H. Remington, verified May 16, May 28, and July 2, 1903; two affidavits of the plaintiff, Hiram Remington, verified May 19, and July 6, 1903; Robert J. Cutting, verified July 7, 1903; two affidavits of Ellis H. Aldrich, verified May 15, and June 6, 1903; Augustus T. Gillender, verified June 26, 1903; George Watkins, verified July 2, 1903; Charles H. Patterson, verified July 2, 1903; certificate of the secretary of state, dated June 1, 1903; notice of motion to vacate service of summons, stipulation of attorneys for parties continuing the motion, order of special term, June 9, 1903, continuing motion, until July 11; stipulation signed by attorneys for the parties hereto, dated August 24, 1903, submitting motion, order of special term, dated Sept. 28, 1903, denying defendant's motion, all of which said papers were filed in my office October 2, 1903.

Also the following papers:

Notice of special appearance by defendant, dated May 11, 1903, notice of appeal by defendant from order denying motion to vacate service of summons filed Oct. 15, 1903, notice of motion by defendant, dated October 16, 1903, for stay, and affidavits of Thomas Burns, verified Oct. 16, 1903, and of Frederick Remington,
113 verified Oct. 19, 1903, and order of special term made Oct. 24, 1903, which latter notice of motion, affidavits and order were filed in my office Oct. 26, 1903; affidavits of Frederick H. Remington, verified Oct. 6, 1903; Hiram Remington, verified Oct. 16, 1903, and of John Carlisle, verified Oct. 17, 1903, and order of county judge, filed Oct. 19, 1903. Also the petition of the defendant for the removal of said suit to the United States circuit court, filed by said defendant on the 26th day of

October, 1903, and the bond on removal of said suit to the United States circuit court, filed by said defendant with said petition on the 26th day of October, 1903, all as appears on the files and of record in my said office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, at the city of Watertown in the said county of Jefferson and the State of New York, on this 4th day of November, one thousand nine hundred and three.

[SEAL.] E. A. CHAPMAN,
Clerk of the County of Jefferson.

Indorsed: Record on removal. Filed Nov. 4, 1903. W. S. Doolittle, clerk.

114 Supreme Court, Jefferson County.

HIRAM REMINGTON
vs.
CENTRAL PACIFIC RAILROAD COMPANY.

Stipulated that the defendant may have twenty days' additional time in which to appear generally or specially herein, or for the purpose of moving to vacate the service of the summons in this action.

Dated April 22nd, 1903.

BROWN, CARLISLE & HUGO,
Plaintiff's Attorneys.

115 Supreme Court, Jefferson County.

HIRAM REMINGTON
vs.
CENTRAL PACIFIC RAILROAD COMPANY.

The defendant may have ten days' time after the hearing and decision of the motion herein to appear generally in case the said motion be decided in favor of the plaintiff. This stipulation shall in no way affect any of plaintiff's rights on account of any prior appearance herein, or be deemed a waiver of any of plaintiff's rights herein.

Dated May 23d, 1903.

BROWN, CARLISLE & HUGO,
Plaintiff's Attorneys.

116 Supreme Court, Jefferson County.

HIRAM REMINGTON, Plaintiff,
vs.
CENTRAL PACIFIC RAILROAD COMPANY, Defendant.

STATE OF NEW YORK, *County of Jefferson,* } ss:

I, E. A. Chapman, county clerk of said county of Jefferson and clerk of the supreme court in said county, and all the courts of record of said county, do hereby certify the above and foregoing to be a full, true and correct copy of the supplemental record and of the whole thereof in the above entitled suit heretofore pending in said supreme court, wherein Hiram Remington is plaintiff and Central Pacific Railroad Company is defendant, said supplemental record consisting of two stipulations signed by Messrs. Brown, Carlisle & Hugo, attorneys for the plaintiff, and which was filed in my office on the 18th day of November, 1903, and as appears on the files and of record in my office.

In testimony whereof I have hereunto set my hand and affixed my official seal of the county clerk of said county and clerk of said supreme court and courts of record, this 18th day of November, 1903.

[L. S.] E. A. CHAPMAN, *Clerk.*

116½ [Endorsed:] Law, No. 3441. United States circuit court, northern district of New York. Hiram Remington, plaintiff, vs. Central Pacific R. R. Company, defendant. Supplemental record on removal. Purcell, Walker & Burns, attorneys appearing specially for def't, 15 Washington street, Watertown, N. Y. Filed the 19th day of Nov., 1903, W. S. Doolittle, clerk.

117 United States Circuit Court, Northern District of New York.

HIRAM REMINGTON, Plaintiff,
against
CENTRAL PACIFIC RAILROAD COMPANY, Defendant.

Upon reading and filing the annexed affidavit of J. C. Stubbs, verified the 30th day of October, 1903, and upon motion of Messrs. Purcell, Walker & Burns, attorneys for defendant, it is

Ordered that the plaintiff or his attorneys show cause before this court on the 10th day of November, 1903, at one o'clock p. m. on said day, or as soon thereafter as counsel can be heard, why the service of the summons in the above entitled suit should not be set aside; and it is further

Ordered that the time of the defendant to enter a general appearance in this suit be and the same is hereby extended until twenty days after the final determination of the motion arising upon this order to show cause.

Service of a copy of this order and the annexed affidavit upon the plaintiff or his attorneys on or before the 6th day of November, 1903 shall be sufficient.

Dated November 5, 1903.

GEO. W. RAY,
U. S. Judge.

118 United States Circuit Court, Northern District of New York.

HIRAM REMINGTON, Plaintiff,
against
CENTRAL PACIFIC RAILROAD COMPANY, Defendant.

STATE OF ILLINOIS,
County of Cook, City of Chicago, } ss:

J. C. Stubbs being duly sworn deposes and says: I reside and have an office in the city of Chicago, State of Illinois, and am not a resident of the State of New York, and was not on the date of the service of the summons herein on me. I have been a resident of the said city of Chicago since July, 1901, and prior to that time was a citizen and resident of the city of San Francisco, in the State of California, for many years. On the 10th day of April, 1903, a copy of the summons in the above entitled suit was served upon me while I was in the city of New York for a few days upon business in no way connected with the business of the defendant above named. I was a director of The Central Pacific Railroad Company, the defendant above named at the time of the service of the said summons, but I was not an officer thereof. The said company is a corporation organized under the laws of the State of California, and at the time of the service of said summons upon me did no business whatever in the State of New York and had no property or office within said State. I further state that on the 29th day of July, 1899, the Central Pacific Railroad Company transferred all its property and franchises to The Central Pacific Railway Company, a corporation of the State of Utah, under the terms of what is known as the Central Pacific re-adjustment which was carried out in pursuance of the provisions of the act of Congress entitled "An act making appropriations to supply deficiencies in the appropriations for the fiscal year ending June 30, 1898, and for prior years for other purposes" and approved July 7, 1898, and that since the said 29th day of
119 July, 1899 the said Central Pacific Railroad Company has done no business and has had no property of any kind whatever in the State of New York.

J. C. STUBBS.

Subscribed and sworn to before me this 30th day of October, 1903.

[SEAL.] JOSEPH A. KUCERA,
Notary Public.

STATE OF ILLINOIS, }
Cook County, } *ss:*

I, Peter B. Olsen, county clerk and clerk of the county court of Cook county, the same being a court of record, do hereby certify that Joseph A. Kucera whose name is subscribed to the annexed jurat, was, at the time of signing the same, a notary public in Cook county, duly commissioned, sworn and acting as such, and authorized to administer oaths and to take acknowledgments of deeds to be recorded in said State of Illinois; that I am well acquainted with the handwriting of said notary, and verily believe that the signature to the said jurat is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at the city of Chicago, in the said county, this 30th day of Oct., 1903.

[SEAL.] PETER B. OLSEN, *Clerk.*

119½ [Endorsed:] Law. No. 3441. United States circuit court, northern district of New York. Hiram Remington, plaintiff, against Central Pacific Railroad Company, defendant. Affidavit of J. C. Stubbs and order to show cause. Purcell, Walker & Burns, attorneys for defendant, Watertown, New York. G. W. R., U. S. J. This motion granted. Motion of pl'ff to remand denied. G. W. R., U. S. J. Filed the 19th day of Jul-, 1904. W. S. Doolittle, clerk.

120 At a stated term of the circuit court of the United States, for the northern district of New York, held in the city of Utica, on the 23 day of July, 1904.

Present: Hon. George W. Ray, acting circuit judge.

HIRAM REMINGTON, Plaintiff,
against
CENTRAL PACIFIC RAILROAD COMPANY, Defendant. }

The defendant above-named having removed the above entitled action from the supreme court of the State of New York to this court, and a copy of the record having been entered in this court, and the plaintiff having applied to this court to have the action remanded to the said supreme court of the State of New York from whence it came; and said motion having come on to be heard at a stated term of this court;

Now upon reading and filing the notice of said motion to remand, dated November 10, 1903, the affidavit of Henry Purcell, verified November 24, 1903; the affidavit of John N. Carlisle, verified Decem-

ber 10, 1903; the affidavit of Willard E. Saxe, verified November 23, 1903; the affidavit of Francis M. Hugo, verified November 23, 1903, the copy of said record entered in this court on November 3, 1903, containing the summons, the special notice of appearance of the defendant for the purpose only of making a motion to set aside the service of the summons, the affidavit of J. C. Stubbs, verified May 2, 1903, the notice of motion to set aside the service of summons, the affidavit of Ellis H. Aldrich, verified May 15, 1903,
121 the affidavit of Frederick H. Remington, verified May 16, 1903, with exhibits annexed, the affidavit of Hiram Remington, verified May 19, 1903, the affidavit of Frederick H. Remington, verified May 28, 1903, the certificate of the secretary of state, dated June 1, 1903, the affidavit of Ellis H. Aldrich, verified June 6, 1903, the affidavit of Andrew Hunter, verified June 8, 1903, the stipulation of the parties hereto dated May 25, 1903, the order postponing the motion to set aside the service of the summons, dated June 9, 1903, the affidavit of Isaac E. Gates, verified June 24, 1903, with exhibits annexed, the affidavit of George Watkins, verified June 24, 1903, the affidavit of Maxwell Evarts, verified June 26, 1903, the affidavit of Augustus T. Gillender, verified June 26, 1903, the affidavits of Charles H. Patterson, George Watkins, and Frederick H. Remington, all verified July 2, 1903, the affidavit of Hiram Remington, verified July 6, 1903, the affidavit of Robert L. Cutting, verified July 7, 1903, with exhibits annexed, the stipulation of the parties hereto dated August 24, 1903, submitting motion to set aside the service of the summons to special term of the supreme court as of July 11, 1903, the order denying defendant's motion to set aside the service of the summons, entered September 28, 1903, notice of appeal from order denying the motion to set aside the service of the summons filed October 15, 1903; the affidavit of John N. Carlisle, verified October 17, 1903, the affidavit of Hiram Remington, verified October 16, 1903, the order of County Judge Emerson, dated October 19, 1903, for the examination of plaintiff, the affidavit of Thomas Burns, verified October 16, 1903, the notice of motion for stay pending appeal from the order denying the defendant's motion to set aside the service of the summons, the order of the special term of the supreme court of New York, dated October 24, 1903, staying proceedings in the said court, and relieving the defendant from default, the petition for removal, verified October 26, 1903, the bond on removal dated October 22, 1903, and the supplemental record filed herein, containing stipulations entered into in the supreme court of the State of New York between the parties herein; and after hearing James G. Flanders and
122 Frederick H. Remington of counsel for plaintiff in support of said motion to remand, and Maxwell Evarts, J. S. Sherman and Henry Purcell, of counsel for defendant in opposition to the said motion; and due consideration having been had, and the court having decided that the cause was properly removed to this

court, it is, upon motion of Purcell, Walker & Burns, solicitors and attorneys for the said defendant,

Ordered, that the said motion to remand be, and the same he reby is denied.

Enter

GEO. W. RAY,
U. S. Judge.

122½ [Endorsed:] At law 3441. Circuit court of the United States northern district of New York. Hiram Remington, plaintiff, *vs.* Central Pacific Railroad Company, defendant. Order denying motion to remand. Purcell, Walker & Burns, attorneys for defendant, Watertown, New York. Filed July 25/04. W. S. Doolittle, clerk.

123 At a stated term of the circuit court of the United States, for the northern district of New York, held in the city of Utica, on the 23 day of July, 1904.

Present: Hon. George W. Ray, acting circuit judge.

HIRAM REMINGTON, Plaintiff,
against
CENTRAL PACIFIC RAILROAD COMPANY, Defendant.

This cause having been duly removed from the supreme court of the State of New York, Jefferson county, on the petition of the defendant appearing in said court specially for the purpose of such removal only, and a motion having been made herein by the defendant appearing specially in this court, and for the purpose of such motion only, to set aside the summons in this action, and the pretended service thereof on the defendant, and such motion having come on regularly to be heard at a stated term of this court:

Now upon reading and filing the order to show cause, granted herein on the 5th day of November, 1903, and the affidavit of J. C. Stubbs, verified October 30, 1903, and the affidavit of Maxwell Evarts, verified November 25, 1903, and upon a certified copy of the record filed in this court on the 4th day of November 1903, upon the removal of this action from the supreme court of the State of New York; and after hearing Maxwell Evarts, of counsel for defendant in support of said motion, and James G. Flanders, of counsel for plaintiff in opposition thereto, and the matter having been
124 fully considered, it is, on motion of Purcell, Walker & Burns, solicitors and attorneys for said defendant,

Ordered, that the aforesaid motion of the defendant arising upon the said order to show cause granted herein November 5, 1903, be, and the same hereby is in all respects granted; and that the summons in this action, and the pretended service thereof on the

defendant be, and the same hereby is in all respects set aside and declared to be null and void and of no effect.

Enter

GEO. W. RAY,
U. S. Judge.

124½ [Endorsed:] At law 3441. Circuit court of the United States northern district of New York. Hiram Remington, plaintiff, vs. Central Pacific Railroad Company, defendant. Order granting motion to set aside service of summons. Purcell, Walker & Burns, attorneys for defendant, Watertown, New York. Filed July 25, /04. W. S. Doolittle, clerk.

125 At a stated term of the circuit court of the United States for the northern district of New York, held in the city of Utica on the 23 day of August, 1904.

Present: Honorable George W. Ray, acting circuit judge.

HIRAM REMINGTON, Plaintiff,
vs.
CENTRAL PACIFIC RAILROAD COMPANY, Defendant. } Judgment at Law.

The above-entitled cause having been commenced in the supreme court of the State of New York in and for Jefferson county, and removed to this court on the petition of the defendant; a copy of the record in said action in said State court, duly certified by the county clerk of said county under the seal of said State court, having been filed in this court on the 4th day of November, 1903; the plaintiff having duly made a motion in this court to remand said cause to said State court on the grounds that the defendant had waived and was estopped from asserting any right it may have had to remove said cause to this court by reason of certain proceedings taken by the defendant in said State court and specified in said motion; that the petition for the removal of said cause from said State court to this court was not filed at the time, or at any time before the defendant was required by the laws of said State or the rules of said State court in which said suit was brought to answer or plead to the declaration or complaint of the plaintiff in said action, but was filed a long time thereafter and too late to effect a removal of this suit to this court; that said petition for removal and the bond filed therewith were not presented to the said State court in session; and that this court is without jurisdiction to hear and determine the cause; and the defendant by an order to show cause having made a motion in this court to set aside the service of the summons in this
126 action on the defendant; and the plaintiff having duly objected to the hearing, consideration or decision by this court of said motion or order to show cause on the above grounds, and also on the ground that this court had no jurisdiction to hear, consider or decide said motion or order to show cause, or do anything in this

action except to remand the same to the State court; and the plaintiff having also urged upon the argument of the last-mentioned motion that the order made by said State court denying defendant's motion to set aside the said service of said summons on the defendant was an adjudication that was binding on this court and could not be reviewed by this court; and said two motions duly coming on for argument at the same time at a stated term of this court; and the court having heard the counsel for the parties on said motions, and, after duly considering the same, having denied the said motion to remand and granted the said motion to set aside the service of said summons, and orders to that effect having been signed and entered at this term of court; and the plaintiff having duly excepted to each of said two decisions and orders, which exceptions are allowed by the court:

Now on motion of Purcell, Walker & Burns, attorneys for the defendant,

It is hereby ordered and adjudged that this cause be and the same is hereby dismissed for want of jurisdiction of the defendant.

Enter.

By the court,

GEO. W. RAY, *Judge.*

126½ [Endorsed:] At law No. 3441. Circuit court of the United States northern district of New York. Hiram Remington, plaintiff, *vs.* Central Pacific Railroad Company, defendant. Judgment. Filed Aug. 30, 1904. W. S. Doolittle, clerk.

127 Circuit Court of the United States, Northern District of New York.

HIRAM REMINGTON, Plaintiff,
vs.
CENTRAL PACIFIC RAILROAD COMPANY, Defendant. } At Law.

Bill of Exceptions.

Be it remembered that the above entitled action was commenced in the supreme court of the State of New York in and for Jefferson county and was removed to this court upon a petition filed by the defendant. A copy of the record in the above entitled action, duly certified by the county clerk of Jefferson county, New York, by his certificate dated the 4th day of November, 1903 under his official seal, was filed in this court on the 4th day of November, 1903. The copy of said record filed in this court as aforesaid consists of copies of the following papers:

1. The petition of the above named defendant, verified October 26, 1903 and filed on the same day in the office of the county clerk of Jefferson county, New York, for the removal of this suit to the cir-

cuit court of the United States for the northern district of New York upon the ground that it is a suit of a civil nature in which there is a controversy between citizens of different States, and in which the matter in dispute in such suit exceeds, exclusive of interest and costs, the sum of $2000. This petition has endorsed upon it the following: "Read on application Oct. 26, 1903, W. M. R., J. S. C."

2. A bond accompanying said petition for the removal of this suit to this court in the sum of five hundred dollars, executed by Fidelity & Deposit Company of Maryland as surety for the defendant. This bond is dated the 22nd day of October, 1903, and was filed in the office of said county clerk on the 26th day of October, 1903, and has endorsed upon it the following: "I hereby approve the within bond as to form and sufficiency of surety. Dated October 26, 1903, Watson M. Rogers, J. S. C."

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3. An order made by Hon. E. C. Emerson, county judge of Jefferson county, New York, dated the 19th day of October, 1903, for the examination of the plaintiff on the 2nd day of November, 1903 at ten o'clock in the forenoon of said day, pursuant to the provisions of article 1, title 3, chapter 9 of the Code of Civil Procedure, entered October 19, 1903.

4. An affidavit made by John N. Carlisle, one of the plaintiff's attorneys, used in procuring said order. This affidavit is dated the 17th day of October, 1903 and states that said action was commenced by the service of a summons upon J. C. Stubbs, a director of the defendant, on the 10th day of April, 1903; that the defendant has appeared specially by its attorneys and made a motion to set aside the service of the summons, which motion was denied, and that notice of appeal from the order denying said motion was served October 15, 1903. This affidavit was filed in said county clerk's office October 19, 1903.

5. The affidavit of Hiram Remington, the plaintiff, verified the 16th day of October, 1903 and filed in said county clerk's office on October 19, 1903. This affidavit was made for the purpose of procuring the said order for the plaintiff's examination, and states the facts and circumstances which make his testimony material and his examination necessary. This affidavit states that the plaintiff is eighty-seven years of age and states the various steps that had been taken in said action and as they elsewhere appear in this bill of exceptions; that the principal office of said defendant Central Pacific Railroad Company is kept by the defendant at No. 4 Montgomery street, in the Southern Pacific building, in the city of San Francisco, State of California; that the defendant Central Pacific Railroad Company also keeps an office at No. 120 Broadway in the city of New York, in the State of New York, which office is also occupied by the Southern Pacific Company, a Kentucky corporation, Central Pacific Railway Company, a railroad corporation duly created, organized and existing under and by virtue of the laws of the State of Utah, and certain other corporations whose roads have been leased or are controlled by the said Southern Pacific

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Company. This affidavit contains the following: "That the complaint in said action has been prepared and verified by the plaintiff, but has not been served upon the defendant or its attorneys, for the reason that no demand for said complaint has been made by or in behalf of said defendant; that no answer has been served in said action; that the nature of said action and the substance of said plaintiff's cause of action are as follows: That this action is brought for the purpose of recovering damages from the defendant, Central Pacific Railroad Company, amounting to $414,492.64 and interest thereon from the 10th day of April, 1903, besides the costs and disbursements of this action, which damages arise out of the following facts." This affidavit then proceeds to allege the issuing of illegal and void certificates of capital stock by the defendant, the publication by the defendant in Poor's Manual in the city of New York of false and fraudulent representations concerning the financial condition of the defendant for the purpose of aiding in the sale of said illegal and void stock; the plaintiff's belief in and reliance upon the legality and validity of said stock so issued, and the purchase of a large quantity of such stock in the city of New York by the plaintiff, such purchase being induced by such representations and the said belief and reliance upon the truth of said representations and the validity of said stock. Said affidavit states the loss to the plaintiff by reason of the premises to be the sum of $188,925, and interest on various amounts from various dates, the said principal sum and interest constituting the amount of said damages, to-wit: the sum of $414,492.64. This affidavit also states the amount for which judgment is demanded, being the said sum of $414,492.64, interest and costs.

6. The affidavit of Frederick H. Remington, son of and counsel for the plaintiff, dated October 6, 1903 and filed in said county clerk's office October 19, 1903, made for the purpose of being used in obtaining the said order for the plaintiff's examination, stating certain facts relating to the evidence bearing upon the merits
130 of the case, and showing the necessity for the taking of the plaintiff's deposition to preserve evidence to be used upon the trial of the action.

7. A certified copy of the affidavit of Ellis L. Aldrich, dated the 6th day of June, 1903, used in obtaining said order for the plaintiff's examination, being the same affidavit hereinafter mentioned.

8. A certified copy of the affidavit of Ellis L. Aldrich, dated May 15, 1903, used for the purpose of obtaining said order for the taking of the plaintiff's examination, and being the same affidavit hereinafter mentioned.

9. A certified copy of the affidavit of Andrew Hunter, dated June 8, 1903, used for the purpose of obtaining said order for the plaintiff's examination and being the same affidavit hereinafter mentioned. Each of said three certified copies of affidavits was filed in said county clerk's office on the 19th day of October, 1903.

10. An order made at a special term of the supreme court of the

State of New York held at the court house in the city of Syracuse, New York, on the 24th day of October, 1903, present Hon. W. S. Andrews, justice presiding. This order was filed and entered in said county clerk's office on the 26th day of October, 1903, and, omitting the title, reads as follows:

"An order having been made in this action and entered in the office of the clerk of Jefferson county October 2nd, 1903, denying a motion duly made by the defendant to set aside the service of the summons herein, and the defendant having appealed from said order to the appellate division of this court:

Now, on reading and filing the affidavit of Thomas Burns, one of the attorneys for the defendant above named, appearing specially herein, which affidavit was verified October 16th, 1903, and the notice of motion for an order staying all proceedings on the part of the plaintiff and the affidavit of Frederick H. Remington, verified October 19, 1903; and after hearing Purcell, Walker & Burns, in support of said motion, and Brown, Carlisle & Hugo, attorneys
131 for the plaintiff, opposed,

It is ordered that the defendant be relieved from any default in appearing herein and that all proceedings on the part of the plaintiff be stayed pending said appeal and until ten days after the decision thereof, except that this order shall not stay the order for the examination of the plaintiff herein granted by Hon. E. C. Emerson, county judge of Jefferson county, and entered in said clerk's office October 19th, 1903.

Let the papers upon which this motion was made be filed and this order entered in Jefferson county.

Enter:

W. S. A., J. S. C.

Approved:
P., W. & B.
B., C. & H.

11. A notice of motion dated October 16, 1903 signed by the defendant's attorneys and addressed to the plaintiff's attorneys, notifying the plaintiff's attorneys that upon the affidavit of Thomas Burns thereto annexed, verified October 16, 1903, and upon all the papers heretofore served or filed and proceedings had in the said action, the defendant's attorneys would move the court at a special term to be held at the court house in the city of Syracuse, New York on the 24th day of October, 1903, at the opening of court on that day, or as soon thereafter as counsel can be heard, for an order staying all proceedings on the part of the plaintiff, respondent, under the order entered herein in the clerk's office of Jefferson county on the 2d day of October, 1903, until the decision of the appellate division of said court, fourth department, upon the appeal taken from said order by the defendant, appellant, or for such other relief as may be just.

12. An affidavit made by Thomas Burns, verified October 16,

1903, annexed to the foregoing notice entitled in this action, which affidavit, omitting the title, reads as follows:

"STATE OF NEW YORK,
County of Jefferson, City of Watertown, } ss:

Thomas Burns, being duly sworn, says, he is one of the at-
132 torneys for the defendant above named, who appears specially in this action by Purcell, Walker & Burns, attorneys and counselors of this court, residing at Watertown, N. Y.; that on the 2d day of October, 1903, an order was entered in this action at a special term of this court, denying a motion made by the defendant, appearing specially as aforesaid, to set aside the service of the summons herein, which was served without a complaint or notice, as deponent is informed and believes, on or about April 10th, 1903; that no complaint has been served or filed herein, as deponent is informed and believes.

That on October 15th, 1903, the defendant, through its said attorneys, appearing specially as aforesaid, served and filed a notice of appeal from said order to the appellate division of this court, fourth department, and has duly perfected said appeal from said order, and intends in good faith to prosecute the same, and that defendant will suffer serious inconvenience and loss if proceedings under the said order are not stayed until the decision of the appeal, as plaintiff might make application to this court for judgment herein; that no previous application for a like order has been made.

THOS. BURNS.

Sworn to before me this 16th day of October, 1903.

M. A. BURNS,
Com'r of Deeds, City of Watertown."

The said affidavit of Thomas Burns and said notice were filed with said order made thereon, in the office of said county clerk on the 26th day of October, 1903.

13. The affidavit of Frederick H. Remington, verified October 19, 1903, made for the purpose of opposing said motion for a stay, and showing the necessity of taking plaintiff's testimony for use upon the trial of the action, and the serious consequences that might follow in case a stay should be granted preventing the taking of the plaintiff's deposition. This affidavit was filed with said order
133 in said county clerk's office on the 26th day of October, 1903.

14. A notice of appeal signed by the defendant's attorneys, addressed to the clerk of the county of Jefferson and to the plaintiff's attorneys. This notice is dated October 15, 1903 and was served and filed the same day, and gives notice that the defendant appeals to the appellate division of the supreme court, fourth department, from the order of the supreme court herein, granted at a

special term thereof on the 11th day of July, 1903, and entered in the clerk's office of the county of Jefferson on the 2d day of October, 1903, and from the whole of said order.

15. An order made at a special term of the supreme court held at the court house in the city of Syracuse, New York on the 11th day of July, 1903. Present, Hon. William S. Andrews, justice presiding. This order is dated September 28, 1903, and was filed and entered in said county clerk's office on the 2d day of October, 1903. After reciting the notice of motion herein made by the defendant to set aside the service of the summons herein on the defendant, and reciting the several affidavits and papers read and filed by the respective parties upon the hearing, the said order proceeds as follows: "and on reading and filing the stipulation signed by the attorneys for the parties hereto, dated August 24, 1903, submitting this motion to the above term of court, and after hearing Purcell, Walker & Burns, counsel for defendant in favor of said motion, and Brown, Carlisle & Hugo, counsel for plaintiff in opposition thereto,

"It is hereby ordered that said motion be and the same is hereby denied with ten dollars' costs to the plaintiff. Enter in Jefferson Co.

"Dated Sept. 28th, 1903.

"Enter:

W. S. A., J. S. C."

16. A stipulation dated August 24, 1903, signed by the plaintiff's attorneys and the defendant's attorneys, whereby it is stipulated that said motion made by the defendant for an order to set aside the service of the summons herein, and all papers in connection therewith, be submitted to Hon. William S. Andrews, justice
134 of the supreme court, as of the special term heretofore appointed to be held at the court house in the city of Syracuse, N. Y. on the 11th day of July, 1903, with the same force and effect as if said motion papers had been submitted at said special term.

17. The affidavit of Robert L. Cutting, the attorney for the plaintiff in an action brought by Walter Morshead on behalf of the stockholders of the Central Pacific Railroad Company, against Charles H. Tweed, Isaac E. Gates and Arabella Huntington, as executors of Collis P. Huntington, deceased, and the Central Pacific Railroad Company. It appears from this affidavit that Collis P. Huntington, deceased, was at the time of his death and for many years prior thereto, a resident of the city of New York, State of New York, and that said Charles H. Tweed, Isaac E. Gates and Arabella Huntington, executors of his last will and testament, and the defendants in said action as such executors, are residents of said city of New York. The complaint in said action brought by said Morshead is attached to said affidavit of Robert L. Cutting as an exhibit and made part of said affidavit. This affidavit tends to show that the defendant Central Pacific Railroad Company, had at the time of the commencement of this action, and still has a large claim against the

estate of said Collis P. Huntington, growing out of the relations of said Collis P. Huntington with the defendant Central Pacific Railroad Company as an officer and agent thereof. This affidavit of Robert L. Cutting was verified July 7, 1903, and was read by the plaintiff in opposition to said motion to set aside the service of said summons.

18. The affidavit of Maxwell Evarts, dated the 26th day of June, 1903. It appears from this affidavit that Maxwell Evarts is of counsel for the defendant in this action, and also counsel for the defendant Isaac E. Gates in the said action brought by Walter Morshead, and tends to show that the summons in said action brought by said Morshead was not properly served upon the Central Pacific Railroad Company, and tends to show that there are no merits in the said action brought by Walter Morshead, and that the defendant Central Pacific Railroad Company has no property in the State of New York. This affidavit of Maxwell Evarts was read by
135 the defendant in support of said motion to set aside the service of said summons.

19. An affidavit made by George Watkins, verified June 24, 1903, and read by the defendant in support of said motion to set aside the service of said summons. This affidavit states that affiant was transfer agent in the city of New York of the Central Pacific Railroad Company, and had charge of the transfer books of said company from the month of May 1882 to and including the month of July 1899, and that no stock was transferred upon the said books to the plaintiff, and that at no time did any stock stand in the plaintiff's name upon the books of said company.

20. The affidavit of Isaac E. Gates, verified the 24th day of June, 1903, read by the plaintiff in support of said motion to set aside the service of the summons. This affidavit tends to show that there is no merit in the said action brought by Walter Morshead, and that the defendant has no property in the State of New York. This affidavit has attached to it and made part of it as Exhibits "A" and "B," the complaint and the answer of said Isaac E. Gates as executor of Collis P. Huntington in said action brought by Walter Morshead.

21. An order made in this action at a special term of the supreme court held at the court house in the city of Watertown, N. Y. June 9, 1903. Present, Hon. M. L. Wright, justice presiding. This order, omitting the title, reads as follows:

"A motion having been made to set aside the service of the summons in the above entitled action, and now coming on for argument, and after hearing Henry Purcell, of counsel for the defendant, in support of said motion, and John N. Carlisle, Esq. of counsel for the plaintiff, in opposition thereto, and counsel for the defendant having asked that defendant be permitted to serve additional affidavits in support of said motion, it is

Ordered that the defendant may serve such additional affidavits

on the plaintiff's attorneys on or before July 1st, 1903, and
136 that "said motion be postponed and heard at special term, to be held by Mr. Justice Andrews at Syracuse, N. Y. July 11th, 1903.

Enter,

M. L. W., *J. S. C.*"

22. A stipulation signed by the plaintiff's attorneys and the defendant's attorneys, dated May 25, 1903, continuing the motion made in said action for the special term on May 16th, 1903 to the special term at the city of Watertown, N. Y. on June 9, 1903.

23. A certificate made at the office of the secretary of state, State of New York, and dated Albany, June 1, 1903, signed by Horace G. Tennant, second deputy secretary of state, under the official seal of said secretary of state, of which the following is a copy:

STATE OF NEW YORK, }
Office of Secretary of State. }

ALBANY, *June* 1, 1903.

"I hereby certify that I have made diligent examination in this office for a statement under section 16, of the general corporation law and a designation by the Central Pacific Railroad Company of a person upon whom summons may be served in this State pursuant to section 432 of the Code of Civil Procedure (the custody of such designation, if any there be, legally belonging to me), and that upon such examination I find no such statement or designation by said corporation on file in this office. I further certify that no certificate of authority authorizing said corporation to do business in this State has been issued.

Witness my hand and the seal of office of the secretary of state at the city of Albany, the day and year first above written.

HORACE G. TENNANT,
[SEAL.] *Second Deputy Secretary of State.*"

This certificate was read by the plaintiff in opposition to said motion to set aside the service of the summons.

137 24. The affidavit of Ellis L. Aldrich, verified the 15th day of May, 1903, and read by the plaintiff in opposition to said motion to set aside the service of the summons. This affidavit shows that on the 10th day of April, 1903 affiant personally served the summons in this action upon J. C. Stubbs, a director of the defendant at 120 Broadway in the borough of Manhattan, city of New York, N. Y., by personally delivering to and leaving with the said J. C. Stubbs a true copy of said summons; that the defendant is a foreign corporation; that affiant has used due diligence to obtain service of said summons upon an officer of the defendant within the State of New York, but that no president, treasurer or secretary or officers performing corresponding functions under another name

could be found by affiant within the State of New York. This affidavit also contains the following: "That deponent has also called at the office of the Southern Pacific Railroad Company in the borough of Manhattan, city of New York, and was there informed that it was also the office of the defendant Central Pacific Railroad Company; that deponent was further informed at the said office that none of the officers of the defendant Central Pacific Railroad Company resided or had his place of business in the State of New York, but that all the officers of said Central Pacific Railroad Company resided and had their places of business in the western part of the United States without the State of New York on the 10th day of April, when the said service was made.

25. An affidavit made by Ellis L. Aldrich, verified the 6th day of June, 1903, and used by the plaintiff in opposition to said motion to set aside the service of said summons. This affidavit states more particularly than the last preceding affidavit made by said Aldrich the manner in which he served the said summons and the efforts that he made to ascertain the whereabouts of the officers of the defendant. This affidavit shows the service of the summons on the said J. C. Stubbs as such director on the 10th day of April, 1903 at 120 Broadway in the borough of Manhattan, city of New
138 York, and says, that at the time deponent served the said summons as aforesaid he knew the said Central Pacific Railroad Company to be the same person mentioned and described in the said summons as defendant therein. This affidavit contains the following: "That subsequently on the 13th day of May, 1903, deponent called at the office of the Central Pacific Railroad Company at 120 Broadway, borough of Manhattan, city of New York, and was there told by a person in the said office that all of the officers of the Central Pacific Railroad Company, on the 10th day of April, 1903, resided and had their places of business in the western part of the United States, without the State of New York, and that there were on the said 10th day of April, 1903, no persons within the State of New York performing corresponding functions to the president, treasurer or secretary of the said Central Pacific Railroad Company under another name."

26. The affidavit of Andrew Hunter, verified June 8, 1903, used by the plaintiff in opposition to said motion to set aside the service of the summons. This affidavit states that on the 6th day of April, 1903 affiant was employed by Aldrich & Vandewalker to make service of the summons in the above entitled action upon the defendant herein; that he proceeded on that day with said summons in his possession to the office of the Southern Pacific Railroad Company at 120 Broadway, Manhattan, New York city, which said office was also the office of the Central Pacific railroad in New York, and made inquiries in said office for J. C. Wilcutt, the secretary, and N. T. Smith, the treasurer of said Central Pacific Railroad Company, but that deponent was there informed that neither said Wilcutt nor said Smith were in New York, but that they resided and had their

places of business in the city of San Francisco, in the State of California; that neither of them was expected to come to New York, and that they very seldom came East from San Francisco.

27. The affidavit of Augustus T. Gillender, verified June 26, 1903, read by the plaintiff in opposition to said motion to set aside the service of the summons. This affidavit identifies a certificate of capital stock issued by the defendant, and a copy of the said certificate is attached to said affidavit and made a part thereof.

139 This certificate shows that it was issued on the 15th day of July, 1890; that it is transferable only on the books of the defendant in the city of New York. It is signed by the 3d vice-president and the secretary of the company, and is countersigned on the 16th day of July, 1890 by George Watkins, transfer agent, and the Fourth National Bank of New York, registrar. It appears from the dividend warrant attached to the certificate that the dividends which may be declared by the company are payable in the city of New York or elsewhere as may be designated by the company.

28. The affidavit of George Watkins, verified the 2d day of July, 1903, read by the plaintiff in opposition to the motion to set aside the service of the summons. This affidavit states that affiant was transfer agent of the defendant in the city of New York, State of New York, from about May, 1882 to about 1897, and that the office of the defendant was during that period in the Mills building, Broad street, in said city, and that said office was the general financial office of said company in New York city. That said company kept in said office the necessary books for the transfer of its stock, and that deponent had charge of said books. That deponent, acting as such transfer agent, would receive certificates of stock of said company, properly endorsed and assigned, would note the transfer of said certificate on the transfer register, and would thereupon give to the person surrendering said certificate a new certificate, and that said new certificates were registered by the Fourth National Bank of the City of New York, which acted as registrar for the defendant during said period, and were also countersigned by deponent as such transfer agent.

29. The affidavit of Charles H. Patterson, cashier of the Fourth National Bank of the City of New York, verified the 2d day of July, 1903, and read by the plaintiff in opposition to said motion to set aside the service of the summons. This affidavit shows that from the year 1882 to about the year 1897, the Fourth National Bank of the City of New York acted as the registrar of the capital stock of the defendant, and that during the same time the defend-

140 ant maintained an office in the city of New York.

30. The affidavit of Frederick H. Remington, verified the 2d day of July, 1903, and read by the plaintiff in opposition to said motion to set aside the service of the summons. This affidavit states that affiant is counsel for the plaintiff in this action, and states the false and fraudulent representations claimed by the plaintiff to have

been made by the defendant and caused to be published in Poor's Manual in the city of New York, and also states some of the evidence by which the plaintiff expects to prove that said false and fraudulent representations were published in the city of New York at the instance of the defendant. This affidavit also states the efforts made by affiant to find an officer of the defendant in the State of New York upon whom to serve the summons in this action.

31. Another affidavit made by Frederick H. Remington, verified the 28th day of May, 1903, and read by the plaintiff in opposition to said motion to set aside the service of the summons. This affidavit states the efforts made by affiant to find an officer of the defendant upon whom to serve the summons in this action; states what he has learned concerning the said action brought by Walter Morshead; that the said Collis P. Huntington, deceased, was a resident of the city of New York, State of New York, at the time of his death, and his executors, who were parties defendant in said action brought by said Morshead, are residents of the State of New York, and that it appears from the complaint in said action brought by Walter Morshead that the said action was brought to compel the said executors to account for a large amount of profits alleged to have been made by their said decedent Collis P. Huntington, while acting as vice-president, director and financial agent of the said Central Pacific Railroad Company, and which are alleged in said complaint to belong to said company, and to compel the said executors to pay the said profits, with interest thereon, to the said Central Pacific Railroad Company for the benefit of its stockholders.

32. An affidavit made by Hiram Remington, the plaintiff,
141 verified the 6th day of July, 1903, and read by the plaintiff in opposition to the motion to set aside the service of the summons. This affidavit states the manner in which the capital stock of the defendant was transferred to the plaintiff, and shows that certificates for such stock were assigned to the plaintiff in blank and was purchased by him in the open stock market in the city of New York, and that said certificates, upon such purchase, were held by him with the said blank assignments thereof, but were not transferred by him upon the books of the defendant, and the said certificates were transferred by him, with said blank assignments thereon, when he sold the same; that he surrendered to the defendant certain dividend warrants attached to said certificates of stock for dividends which were declared upon the same while he held such stock; that affiant did not discover the facts constituting the frauds alleged by him, or any of them, until long after the sale and transfer of said stock and certificates by him, and not till in or about the month of December, 1902. The affidavit then states that the plaintiff relied upon the representations caused to be published by the defendant in said Poor's Manual relating to the financial condition of the defendant, in purchasing the said stock, and relied upon all the stock of the defendant corporation having been fully paid and duly and

legally issued, in purchasing said stock, and did not discover that the article referred to published in Poor's Manual did not state the truth until in or about the month of December, 1902; that the plaintiff has been at the several times mentioned in the affidavit, and still is, a resident of Jefferson county, State of New York. This affidavit contains the following: "That the plaintiff expects to be able to prove upon the trial of this action the purchases and sale of said stock as aforesaid, the frauds of the defendant, that the plaintiff was damaged thereby, and all the facts constituting a good cause of action in favor of the plaintiff and against the defendant."

33. Another affidavit made by the plaintiff, Hiram Remington, verified the 19th day of May, 1903, and read in opposition to
142 said motion to set aside the service of the summons, in which he states that the cause of action for which this action has been commenced arose in the State of New York; that said action is brought to recover damages arising and resulting from the purchase by the plaintiff of certain shares of the capital stock in the defendant corporation; that affiant purchased the said stock in the city of New York, State of New York, and paid for it in said city, and the said certificates of stock were transferred to him in said city.

34. An affidavit made by Frederick H. Remington, verified the 16th day of May, 1903, and read in opposition to said motion to set aside the service of the summons, stating that he is a son of the plaintiff and an attorney and counsellor at law, and of counsel for the plaintiff in this action; that the defendant had an office for the transaction of business of said corporation in the city of New York, State of New York, until in or about the year 1900, and that during part of said time the office of said company in the city of New York was at # 23 Broad street, in said city, as anyone may ascertain from directories of New York city or from Poor's Manual for 1899 and prior years; that the cause of action for which the above entitled action is brought arose in the State of New York during the period the defendant maintained an office in said city of New York as aforesaid; that the action was brought for the purpose of recovering damages from the defendant for issuing illegal and void certificates of the capital stock of said Central Pacific Railroad Company, and for making and causing to be published false and fraudulent representations concerning the capital stock represented by said certificates, and concerning the affairs and condition of said Central Pacific Railroad Company, and concerning the consideration paid to said company for said stock for the purpose of giving said capital stock represented by said certificates a fictitious value upon the market, and for the purpose of inducing the public to purchase said stock represented by said certificates, and alleging that the said stock was issued by the defendant in the State of New York,
143 and stating that said false and fraudulent representations were made and published by the defendant in the State of New York. This affidavit states in considerable detail the facts

claimed by the plaintiff to constitute a cause of action against the defendant. The affidavit further says: "The plaintiff lost a large amount of money by reason of having purchased the said fraudulent and void certificates of stock as aforesaid, and was damaged in the amount of said loss by reason of the facts herein set forth, and which will be more fully set forth in the complaint in this action."

35. An affidavit made by J. C. Stubbs, verified the 2d day of May, 1903, upon which the defendant made the motion in the State court to set aside the service of the summons in this action. This affidavit, omitting the title, reads as follows:

"STATE OF COLORADO, } ss:
County of Pueblo, }

J. C. Stubbs, being duly sworn, deposes and says: I reside and have an office in the city of Chicago, State of Illinois, and am not a resident of the State of New York and was not on the date of the service of the summons herein on me. I have been a resident of the said city of Chicago since about July, 1901, and prior to that time was a citizen and resident of San Francisco, California, for many years. On the 10th day of April, 1903, a copy of a summons in the above entitled action was served upon me while I was in the city of New York for a few days upon business in no way connected with the business of the above named defendant. I was a director of the defendant, The Central Pacific Railroad Company, above named, at the time of the service of said summons but was not an officer thereof. The said company is a corporation organized under the laws of the State of California, and it does no business whatever in the State of New York and has no property within the said State. And I do further depose and say that I have no knowledge or information on the subject of any cause of action existing in favor of the plaintiff against the said defendant. If such a cause of action does
144 exist I am unable to state where it arose, but as the defendant has not, to my knowledge, done or transacted any business within the State of New York, I do not believe that if a cause of action exists in favor of the plaintiff against the said defendant, it arose within the said State of New York.

J. C. STUBBS.

Subscribed and sworn to before me this 2d day of May, 1903.
MILES E. SAUNDERS,
[NOTARIAL SEAL.] *Notary Public.*
Commission expires February 1st, 1905."

36. A notice in this action served upon the plaintiff's attorneys on the 11th day of May, 1903, of which the following is a copy, omitting the title:

"Take notice that upon the summons herein and the affidavit of J. C. Stubbs, verified May 2nd, 1903, a copy of which is hereto an-

nexed and herewith served, a motion will be made at a special term of the supreme court, appointed to be held at the court house in the city of Utica, N. Y., on May 16th, 1903, at the opening of the court on that day, or as soon thereafter as counsel can be heard, for an order setting aside the service of the summons herein, on the ground that such service was irregular, defective, null and void and of no effect; or for such other or further order as may be proper, with costs of motion.

Dated May 11th, 1903.

Yours, etc.,

PURCELL, WALKER & BURNS,
Attorneys for Defendant for Purposes of This Motion Only,
15 *Washington Street, Watertown, N. Y.*

To Messrs. Brown, Carlisle & Hugo, plaintiff's attorneys."

37. A notice of special appearance for making a motion in this action to set aside the service of the summons on the defendant, addressed to the plaintiff's attorneys and signed by the de-
145 fendant's attorneys, and dated May 11, 1903.

38. The summons in this action which, omitting the title, reads as follows:

"To the above named defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorneys within twenty days after the service of this summons exclusive of the day of service; and, in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Trial to be held in the county of Jefferson.

BROWN, CARLISLE & HUGO,
Plaintiff's Attorneys.

Office & P. O. address, No. 8 Stone St., Watertown, N. Y.

Dated this 2nd day of April, 1903."

All of said papers used on said motion to set aside the service of the summons were filed in said clerk's office October 2, 1903.

The various affidavits, orders, stipulations and papers hereinbefore enumerated having been certified to this court from the supreme court of the State of New York in and for Jefferson county, by E. A. Chapman, county clerk of said Jefferson county, and clerk of said supreme court for said county, by his certificate under his official seal, dated the 4th day of November, 1903, which said certificate states that the said copies of said affidavits, orders, stipulations and other pa— are true and correct copies of the record and the whole thereof in said suit or action, and enumerates said papers in said certificate, and said certificate and said copies of said papers an-

nexed thereto having been filed in the office of the clerk of this court on the 4th day of November, 1903, and the said certificate and the said copies of said papers having thereupon become a part of the record in this court, the said certificate, and all of said affidavits, orders, stipulations and other papers enumerated in said certificate and hereinbefore enumerated, are hereby referred to and made a part of this bill of exceptions as if fully set forth in this bill of exceptions at large.

146 Thereafter and on the *19th* day of November, 1903 there was filed in this court a copy of a supplemental record from said State court, duly certified by said county clerk of Jefferson county, containing copies of two stipulations in this action, in said State court, procured by the defendant's attorneys from the plaintiff's attorneys, and which were filed after said first record was transmitted to this court. The first of said stipulations, omitting the title, reads as follows:

"Stipulated that the defendant may have twenty days' additional time in which to appear generally or specially herein, or for the purpose of moving to vacate the service of the summons herein.

April 22nd, 1903.

BROWN, CARLISLE & HUGO,
Att'ys for Pl'ff."

The second of said stipulations, omitting the title, reads as follows:

"The defendants may have ten days' time after the hearing and decision of the motion herein, to appear generally, in case the said motion be decided in favor of the plaintiff. This stipulation shall in no way affect any of the plaintiff's rights on account of any prior appearance herein, or be deemed a waiver of any of plaintiff's rights herein.

Dated May 23d, 1903.

BROWN, CARLISLE & HUGO,
Plaintiff's Attorneys."

On the 5th day of November, 1903, the defendant in this action procured an order in said action in this court of which the following, omitting the title, is a copy:

"Upon reading and filing the annexed affidavit of J. C. Stubbs, verified the 30th day of October, 1903, and upon motion of Messrs. Purcell, Walker & Burns, attorneys for defendant, it is

Ordered that the plaintiff or his attorneys show cause before this court on the 10th day of November, 1903, at one o'clock p. m. on said day, or as soon thereafter as counsel can be heard, why the service of the summons in the above entitled suit should not

147 be set aside; and it is further

Ordered that the time of the defendant to enter a general

appearance in this suit be and the same is hereby extended until twenty days after the final determination of the motion arising upon this order to show cause.

Service of a copy of this order and the annexed affidavit upon the plaintiff or his attorneys on or before the 6th day of November 1903, shall be sufficient.

Dated, November 5, 1903.

GEO. W. RAY,
U. S. Judge."

This order was made upon an affidavit of J. C. Stubbs, verified October 30, 1903, of which the following, omitting the title, is a copy:

"STATE OF ILLINOIS,
County of Cook, City of Chicago, } ss:

J. C. Stubbs, being duly sworn deposes and says: I reside and have an office in the city of Chicago, State of Illinois, and am not a resident of the State of New York, and was not on the date of the service of the summons herein on me. I have been a resident of the said city of Chicago since July, 1901 and prior to that time was a citizen and resident of the city of San Francisco, in the State of California, for many years. On the 10th day of April, 1903, a copy of the summons in the above entitled suit was served upon me while I was in the city of New York for a few days upon business in no way connected with the business of the defendant above named. I was a director of The Central Pacific Railroad Company, the defendant above named, at the time of the service of the said summons, but I was not an officer thereof. The said company is a corporation organized under the laws of the State of California, and at the time of the service of said summons upon me did no business whatever in the State of New York and had no property or office within said State. I further state that on the 29th day of July, 1899 the Central Pacific Railroad Company transferred all its property and
148 franchises to the Central Pacific Railway Company, a corporation of the State of Utah, under the terms of what is known as the Central Pacific re-adjustment which was carried out in pursuance of the provisions of the act of Congress entitled "An act making appropriations to supply deficiencies in the appropriations for the fiscal year ending June 30, 1898, and for prior years for other purposes," and approved July 7, 1898, and that since the said 29th day of July, 1899 the said Central Pacific Railroad Company has done no business and has had no property of any kind whatever in the State of New York.

J. C. STUBBS.

Subscribed and sworn to before me this 30th day of October, 1903.

[SEAL.] JOSEPH A. KUCERA,
Notary Public."

A certificate concerning the official character of the notary before whom said affidavit was verified is attached to said affidavit.

The foregoing order to show cause and affidavit were served upon the plaintiff's attorneys on the 6th day of November, 1903.

On the 10th day of November, 1903, and before said order to show cause came on for hearing, the plaintiff's attorneys filed in this court a written motion in this action, of which the following is a copy, omitting the title, to-wit:

"Now comes the above named plaintiff and moves this court to remand the above entitled cause to the supreme court of the State of New York in and for Jefferson county, on the ground that this court is without jurisdiction to hear and determine the cause.

Dated November 9th, 1903.

BROWN, CARLISLE & HUGO,
Plaintiff's Attorneys, 8 Stone St., Watertown, N. Y.

149 JAMES G. FLANDERS,
FREDERICK H. REMINGTON,
Of Counsel."

That thereafter, and on the 13th day of June, 1904, the plaintiff's attorneys served upon the defendant's attorneys a notice in this action signed by them and addressed to the defendant's attorneys, dated June 11, 1904, entitled in this action and amending the said motion to remand by particularly specifying the grounds of said motion as follows:

"1. The defendant waived and is estopped from asserting any right it may have had to remove said cause from the said State court to the circuit court of the United States in and for the northern district of New York by reason of the fact that the defendant procured an order from said State court in said action on the 24th day of October, 1903, and caused the same to be entered in the office of the clerk of said State court on the 26th day of October, 1903, which order stayed all proceedings on the part of the plaintiff in said action pending the appeal which had been taken by the defendant to the appellate division of the supreme court, fourth department, in the State of New York, from an order made in said action by the supreme court of the State of New York and entered on the 2nd day of October, 1903, denying a motion made by said defendant to set aside the service of the summons in said action and until ten days after the decision of said appeal, "except that this order shall not stay the order for the examination of the plaintiff herein granted by Hon. E. C. Emerson, county judge of Jefferson county, and entered in said clerk's office October 19, 1903," which said order procured by the defendant, dated October 24, 1903, was made upon an affidavit of Thomas Burns, one of the defendant's attorneys in said action, made
150 on the 16th day of October, 1903, which contained the following: "That on the 2nd day of October, 1903, an order was

entered in this action at a special term of this court, denying a motion made by the defendant, appearing specially as aforesaid, to set aside the service of the summons herein, which was served without a complaint or notice, as deponent is informed and believes, on or about April 10th, 1903; that no complaint has been served or filed herein, as deponent is informed and believes. That on October 15th, 1903, the defendant, through its said attorneys, appearing specially as aforesaid, served and filed a notice of appeal from said order to the appellate division of this court, fourth department, and has duly perfected said appeal from said order, and intends in good faith to prosecute the same, and that said defendant will suffer serious inconvenience and loss if proceedings under the said order are not stayed until the decision of the appeal, as plaintiff might make application to this court for judgment herein."

2. The petition for the removal of said cause from the supreme court of the State of New York to the circuit court of the United States in and for the northern district of New York was not filed at the time or any time before the defendant in said cause was required by the laws of said State, or the rules of said State court in which said suit was brought, to answer or plead to the declaration or complaint of the plaintiff in said action, but was filed a long time thereafter.

3. The said petition for removal and the bond filed therewith were not presented to the said State court.

4. The circuit court of the United States in and for the northern district of New York is without jurisdiction to hear and determine the cause."

That the last mentioned notice with proof of service thereof
151 on the defendant's attorneys on June 13th, 1904 was filed in this court on the 17th day of June, 1904, and said amended motion was duly presented to the court.

That each of said grounds mentioned in said amended motion was presented to this court by plaintiff's counsel on the argument of said motion to remand and in the briefs of the plaintiff's counsel and was discussed by defendant's counsel in their briefs and all of said briefs were submitted to the court upon the hearing of said motion to remand.

On the 10th day of November, 1903, and before said order to show cause why the service of said summons should not be set aside came on for hearing, the plaintiff's attorneys filed in this court written objections to the hearing, consideration or decision by this court of said motion or order to show cause, of which objections the following is a copy, omitting the title, to-wit:

"And now comes the plaintiff above named and objects to the hearing, consideration or decision by the above named court of the motion or order to show cause of the defendant, returnable before said court November 10th, 1903, at 1 o'clock p. m., why the service of the summons in said action should not be set aside, for the following reasons, to-wit:

1st. Because said defendant did not, as by law required, make and file a petition in said action in the State court for the removal of said suit into this court at or before the time the defendant was required by the laws of the State of New York or by the rules of the supreme court of New York to answer or plead to the complaint or declaration of the plaintiff.

2nd. Because this court has no jurisdiction to hear, consider or decide said motion or order to show cause or to do anything in said action except to remand the same to the State court.

3rd. Because no such bond as is required by law accompanied the said petition or was filed.

4th. Because the said petition for removal was and is
152 insufficient in law and according to the statute and practice.

Dated November 10th, 1903.

BROWN, CARLISLE & HUGO,
Plaintiff's Attorneys, 8 Stone St., Watertown, N. Y.

JAMES G. FLANDERS,
FREDERICK H. REMINGTON,
Of Counsel."

That in addition to the said written objections raised to the hearing of said order to show cause, it was also urged upon the argument of said motion in this court to set aside the service of the summons by the plaintiff's counsel, and in the briefs of the plaintiff's counsel in opposition to said motion, that this court could not review and could not set aside the order made in the State court in said action dated the 28th day of September, 1903 and entered October 2, 1903, denying the defendant's motion to set aside the service of said summons and that said order was an adjudication that was binding on this court.

That in support of the said motion to remand this action to the supreme court of the State of New York in and for Jefferson county, the plaintiff read to this court and filed an affidavit made by Willard E. Saxe which, omitting the title, reads as follows:

"STATE OF NEW YORK, } ss:
County of Jefferson, }

Willard E. Saxe being duly sworn deposes and says that he is special deputy clerk of the county of Jefferson, State of New York, and special deputy clerk of the supreme and county courts in and for said county, and was such special deputy clerk during all the year 1903. That as such special deputy clerk he kept the minutes of the different courts in Jefferson county and attended all the holdings of said courts; that Mr. Justice Watson M. Rogers held a special term of the supreme court on the 3rd day of October, 1903, and said special term was then adjourned to October 10, 1903, at which time

it was adjourned without date. That said justice held no other
153 regular or special term in Jefferson county to the knowledge of deponent until the 7th day of November, 1903, and that on the 26th day of October, 1903, no term of the supreme court of the State of New York in and for the county of Jefferson was held within the county by Mr. Justice Rogers and said justice was not presiding at any term of court on the 26th day of October, 1903, but was at his chambers in the court house in the city of Watertown, Jefferson county on that date. That the petition and bond for removal of the above entitled cause to the circuit court of the United States, which was filed in the Jefferson county clerk's office on October 26th, 1903, signed by said justice on said date was presented to said justice at his chambers aforesaid and not while he was holding any term of the supreme court.

In addition to deposing to the foregoing facts, I, said Willard E. Saxe, do hereby certify to them as special deputy clerk of Jefferson county, State of New York.

In witness whereof I have hereunto set my hand and affixed the seal of said courts at the city of Watertown, N. Y. this 23rd day of November, 1903.

WILLARD E. SAXE,
Special Dept. Clerk.

Subscribed and sworn to before me this 23rd day of November, 1903.

WAYLAND F. FORD,
Notary Public.

[Jefferson County Seal.]"

Annexed to this affidavit was a certificate under the hand and seal of the county clerk of Jefferson county, authenticating the signature of the notary public before whom it was taken, and his authority. That in support of said motion to remand said cause to the State court, the plaintiff read to this court and filed an affidavit of Francis M. Hugo which, omitting the title, reads as follows:

"STATE OF NEW YORK, } ss:
Jefferson County, }

Francis M. Hugo, being duly sworn says he resides at the city of Watertown, N. Y. and is one of the attorneys for the plaintiff named in the above entitled action.

154 "Deponent further says that on the 23d day of November, 1903, he made an application to Hon. Watson M. Rogers, justice of the supreme court, and the justice who approved the petition and bond for removal of the above cause to the circuit court of the United States, for a certificate that said justice was not holding court at the time said petition and bond were approved on the 26th day of October, 1903, but was at his chambers. That said Mr.

Justice Rogers stated to deponent that he did not keep a record of the different terms of court held by him so that he could not tell him whether he was holding court on that day or not, but that Willard E. Saxe, special deputy clerk of Jefferson county kept the minutes of all the courts held by him and that said Saxe was the proper person to make application to for the purpose of determining whether there was a court on that day or not and that if said Saxe would make such a certificate it would correctly show the facts.

FRANCIS M. HUGO.

Sworn to before me this 23rd day of November, 1903.

JNO. CONBOY,
Notary Public.

[NOTARIAL SEAL.]"

In support *in* said motion to remand said action to said State court, the plaintiff read to this court and filed the affidavit of John N. Carlisle which, omitting the title, reads as follows:

"STATE OF NEW YORK, }
Jefferson County, } *ss:*

John N. Carlisle, being duly sworn, deposes and says that he is a member of the firm of Brown, Carlisle & Hugo, who are the attorneys for the plaintiff in the above entitled action; that he has in his possession a printed copy of the 'General Rules of Practice' adopted and established as provided by section 17 of the Code of Civil Procedure of the State of New York, which were in force and effect at and prior to the time of the commencement of this action, and which still continue in force and effect; that said printed
155 copy of said rules was issued by proper authority, and is entitled as follows: 'Supreme Court Rules—General Rules of Practice (adopted in convention of the justices of the supreme court assigned to the appellate division thereof held at Albany, December 4, 1895, pursuant to Code of Civil Procedure, sec. 17; amended October 24, 1899);' that the following is a copy of rule 24 of said printed rules, to-wit:

'Rule XXIV.

'Affidavit for order extending time.—No order extending a defendant's time to answer or demur shall be granted unless the party applying for such order shall present to the judge to whom the application shall be made an affidavit of merits, or proof that it was been filed, or an affidavit of the attorney or counsel retained to defend the action that from the statement of the case in the action made to him by the defendant he verily believes that the defendant has a good and substantial defense upon the merits to the cause of action set forth in the complaint, or to some part thereof. The affi-

davit shall also state the cause of action and the relief demanded in the complaint, and whether any and what extension or extensions of time to answer or demur have been granted by stipulation or order, and where any extension has been had, the date of issue shall be the same as though the answer had been served when the time to answer first expired.

'When the time to serve any pleading has been extended by stipulation or order for twenty days, no further time shall be granted by order, except upon two days' notice to the adverse party of the application for such order.'

That the said rule 24 was in force at the commencement of this action, and has ever since been in force and effect; that said rule 24 was never complied with by the defendant in this action; that no affidavit or proof was ever presented, served or filed by the defendant in this action, as provided in said rule 24; that no notice of an application for an order for any extension of time to answer or demur was ever served by or in behalf of the defendant in said action; that no copy of any demurrer or of any answer in said action was ever served by or on behalf of the defendant therein; that the defendant's time to answer, demur or plead, or to demand a copy of the complaint in said action, has never been extended by a stipulation or order or otherwise; that the defendant's time to appear in said action has not been extended by stipulation, order or otherwise, except that on the 22d day of April, 1903, the plaintiff's attorneys gave the defendant's attorneys a stipulation giving the defendant
156 twenty days' additional time in which to appear, generally or specially, in said action, or for the purpose of moving to vacate the summons therein; and on the 23d day of May, 1903, the plaintiff's attorneys gave the defendant's attorneys a stipulation giving the defendant ten days' time after the hearing and decision of the defendant's motion to set aside the service of the summons to appear generally in case the said motion be decided in favor of the plaintiff; that this stipulation contained a provision that it should not be deemed a waiver of any of the plaintiff's rights; that the defendant in said action was in default and the plaintiff could have applied for judgment in said action between the 20th day of May and the 23d day of May, 1903; and the defendant again became in default in said action ten days after the decision of said motion in favor of the plaintiff on the 28th day of September, 1903, said ten days expiring on the 8th day of October, 1903; that from the said 8th day of October, 1903, until the filing of the petition and bond for the removal of this action to the circuit court of the United States for the northern district of New York on the 26th day of October, 1903, the defendant was in default in said action and the plaintiff could have applied to the court for judgment in said action, except that on the 24th day of October, 1903, the court granted a stay of proceedings which had the effect to prevent such application for judgment until ten days after the decision of the appeal taken

by the defendant in said action; that the defendant was in default at the time of filing the petition and bond for removal of said motion to this court.

JOHN N. CARLISLE.

Subscribed and sworn to before me this 10th day of December, 1903.

[NOTARIAL SEAL.] JNO. CONBOY,
Notary Public, Jefferson County, New York."

That in support of said motion to remand this action to said State court the plaintiff also read to the court the copy of the record
157 in said action, containing the various affidavits, stipulations, orders and other papers hereinbefore mentioned, certified by the county clerk of Jefferson county and filed in this court on the 4th day of November, 1903, as hereinbefore stated.

That in opposition to said motion to remand said action to said State court the defendant's attorneys read and filed an affidavit of Henry Purcell which, omitting the title, reads as follows:

"STATE OF NEW YORK, }
County of New York, } *ss:*

Henry Purcell, being duly sworn, says, he is one of the attorneys for the defendant herein, having been retained on or about April 13th, 1903. That with his retainer, there was handed to him a summons, which it was stated had recently been served on one J. C. Stubbs, a director of the defendant while he was temporarily within this State. That on April 22d, 1903, deponent's firm obtained a stipulation from Brown, Carlisle & Hugo, plaintiff's attorneys, extending defendant's time twenty days additional in which to appear generally or specially herein. Thereafter and on or about the 11th day of May, 1903, deponent prepared and served motion papers on plaintiff's attorneys to vacate the service of the said summons, subscribing the same as appearing specially for that purpose. That by stipulation, dated May 14th, 1903, it was agreed that said motion might be brought on for argument on May 23rd, instead of May 16th, the time for which it was noticed. On May 23d, 1903, plaintiff's attorneys further extended the defendant's time to appear until ten days after the hearing and decision of the motion to vacate the service of the said summons. The hearing of said motion was further adjourned by stipulation until June 9th, and then until July 11th, before Mr. Justice Andrews of Syracuse.

Deponent further says, that on June 25th, he was suddenly taken ill, left his office, and on account of his illness did not return
158 to it and was not able to return to it until October 15th, 1903.

That on Sept. 28th, Justice Andrews denied defendant's motion to vacate the service of said summons and his order thereon

was entered in Jefferson county clerk's office Oct. 2nd, and a copy thereof with notice of such entry was on the day last mentioned served on deponent's said firm. That on Oct. 15th, defendant filed and served notice of appeal from the order denying the said motion and on that day, deponent discovered that the defendant was in default in appearing. That this was due entirely to deponent's illness. That on Oct. 16th defendant moved for stay of proceedings pending the appeal taken from the said order and upon said motion coming on on Oct. 24th, an order was made staying all proceedings on the part of the plaintiff, with the exception of the examination of the plaintiff before trial until ten days after the decision of the said appeal and relieving defendant from any default in appearing that then existed. This order was approved by the plaintiff's attorneys in writing upon the face thereof, was made on a Saturday at Syracuse, N. Y., and was entered in Jefferson county clerk's office Monday, Oct. 26th, 1903, which was as soon as it could be entered after it was made. That on the same day, Oct. 26th, deponent, on behalf of the defendant, presented its petition and bond for removal of this cause to the United States circuit court for the northern district of New York to Mr. Justice Rogers, a judge of the supreme court of this State, who received the said petition and approved of said bond and the same with said petition was thereupon filed in said clerk's office on the same day, to-wit: October 26, 1903.

Deponent further says that on or about October 19, 1903, the plaintiff applied *ex parte* upon the affidavits of the plaintiff, Hiram Remington, and others, to the county judge of Jefferson county for an order to examine the said plaintiff before trial which was granted on that day by said judge and thereafter and on October 23d, 1903, copies of said affidavits and order were served on deponent's
159 firm. That it was on the day last mentioned, to-wit: October 23, 1903, that it appeared for the first time from the papers or record in this action that the amount involved therein was two thousand dollars, exclusive of interest and costs, and this was shown and appears by a statement in the said last mentioned affidavit of Hiram Remington when he states in substance that the action was brought to recover $414,492.64.

That the case thereupon became a removable controversy and deponent as soon as possible thereafter made application for its removal. This deponent further states that he was advised informally on October 22, 1903, but not by the record herein, that the case would probably involve more than two thousand dollars and then out of abundant precaution obtained the bond on removal so as to be prepared to remove the action in case it became of record a removable one.

Deponent further says, that no complaint herein has been filed to his knowledge in the clerk's office of Jefferson county nor has any been served upon him or his firm.

And he further says, that on Nov. 4, 1903, a certified transcript of

the record of all the papers and proceedings herein, which has been filed in said Jefferson county clerk's office was duly made and certified by the clerk of said county and on the same day filed with the clerk of the United States circuit court for the northern district of New York, at Utica, N. Y., and that a supplemental record was filed with the said clerk on November 19th, 1903.

HENRY PURCELL.

Subscribed and sworn to before me this 24 day of November, 1903.

[SEAL.] CHARLES FRANKLIN,
Notary Public, New York County."

160 That in support of said motion of the defendant to set aside the service of the summons the defendant's attorneys read and filed in this court an affidavit of Maxwell Evarts, verified the 25th day of November, 1903, of which the following, omitting the title, is a copy :

"STATE OF NEW YORK, COUNTY OF NEW YORK, } ss.:
Southern District of New York,

Maxwell Evarts being duly sworn deposes and says: I am counsel for the defendant in the above entitled action; and state of my own knowledge that the Central Pacific Railroad Company has done no business of any kind in the State of New York since July 29, 1899, and that since said date, it has had no office in the State of New York for the transaction of business and no property therein.

I further state that on July 29, 1899, the Central Pacific Railroad Company transferred to the Central Pacific Railway Company, all its property by an indenture and agreement, copy of which is annexed hereto and made a part hereof, marked Exhibit 'A;' and that such transfer was in pursuance of an agreement made between the United States of America, the Central Pacific Railroad Company, and Messrs. Speyer & Company, bankers of New York city, and dated February 1, 1899, a copy of which is also annexed hereto and made a part hereof marked Exhibit 'B.'

MAXWELL EVARTS.

Subscribed and sworn to before me this 25th day of November, 1903.

[SEAL.] CHARLES FRANKLIN,
Notary Public, New York County."

Exhibit "A" attached to said affidavit of Maxwell Evarts is a deed and agreement made and entered into the 29th day of July, 1899, by and between the Central Pacific Railroad Company, party of the first part, and the Central Pacific Railway Company, party
161 of the second part, duly executed and acknowledged by said two companies, in and by which deed and agreement, and in

consideration of one dollar, and in consideration of the undertakings, covenants and agreements on behalf of the party of the second part therein contained, the party of the first part grants, bargains, sells, conveys, assigns, transfers and sets over unto the party of the second part all the properties, claims, demands, moneys, choses in action, lease-holds, rights, privileges and franchises owned by or belonging to the party of the first part, or to which it is in any wise entitled particularly describing them.

That Exhibit "B" attached to said affidavit of Maxwell Evarts is an agreement made and entered into the 1st day of February, 1899 by and between the United States of America, the Central Pacific Railroad Company and Messrs. Speyer & Company, bankers of the city of New York, settling the indebtedness to the United States growing out of the issue of bonds in aid of the construction of the Central Pacific and Western Pacific bond-aided railroads, and providing how the said indebtedness shall be secured and paid.

That in opposition to said motion made in this court to set aside the service of the summons, the plaintiff read the said copy of the record in said action certified from the State court, and the various papers therein contained.

That said motion to remand and said motion to set aside the service of said summons in said action came on for argument at the same time at a stated term of this court before Hon. George W. Ray, district judge presiding.

That thereafter and on the 23rd day of July, 1904 at a stated and the present term of this court, the court made an order denying the plaintiff's said motion to remand this cause to the supreme court of the State of New York in and for Jefferson county and at the same time made an order granting the defendant's said motion (arising on said order to show cause) to set aside the service of the summons and setting aside the said summons and the service thereof
162 and declaring the same to be null and void and of no effect; that said two orders were filed and entered on the 25th day of July, 1904; that said two orders are a part of the record in this action and are hereby referred to for a more particular description thereof; that thereafter during the same term of court at which said orders were made being the present term of court and on the 12th day of August, 1904 the plaintiff duly filed his exceptions, which are allowed by the court, and of which the following is a copy omitting the title, to-wit:

"Now comes the above named plaintiff, Hiram Remington, and

First. Excepts to the order of this court made the 23rd day of July, 1904, and entered the 25th day of July, 1904, denying the plaintiff's motion to remand this cause to the supreme court of the State of New York in and for Jefferson county.

Second. Said plaintiff excepts to the order of this court made the 23rd day of July, 1904, and entered the 25th day of July, 1904, granting the motion of the defendant arising upon the order to show cause granted herein November 5th, 1903.

Third. Said plaintiff excepts to the order of this court made the 23rd day of July, 1904, and entered the 25th day of July, 1904, setting aside the summons in this action and the service thereof on the defendant and declaring the same to be null and void and of no effect.

Dated August 9th, 1904.

BROWN, CARLISLE & HUGO,
Plaintiff's Attorneys.

JAMES G. FLANDERS,
FREDERICK H. REMINGTON,
Of Counsel."

That thereafter, during the same term of court at which said last mentioned two orders were made and during the present term of court and on the 23rd day of August, 1904 this court rendered judgment in this action ordering and adjudging that this cause
163 be and the same is thereby dismissed for want of jurisdiction of the defendant, which judgment was entered on the 30th day of August, 1904, is a part of the record in this action and is hereby referred to for a more particular description thereof. That no opinion was written or filed in this cause.

And in order that said proceedings had may more certainly appear of record in this cause, I, George W. Ray, judge of said court before whom all said proceedings in this court were had, this day, during the same term of court at which said two orders were made by this court and entered and at which said judgment was rendered by this court and entered, do settle, allow, sign and certify the foregoing as and for the bill of exceptions in this cause and all therein contained is made manifest and part of the record in said cause, and I hereby certify that said bill of exceptions contains all the proceedings had in this court in said cause and all the evidence and proofs produced in said proceedings, and I further certify that the jurisdiction of the court is in issue in said case and is the only question arising in said case.

In witness whereof I have hereunto set my hand this 16th day of September, A. D. 1904.

GEO. W. RAY, *Judge.*

163½ [Endorsed:] At law, No. 3441. Circuit court of the United States, northern district of New York. Hiram Remington, plaintiff, *vs.* Central Pacific Railroad Company, defendant. Bill of exceptions. Brown, Carlisle & Hugo, plaintiff's attorneys, # 8 Stone street, Watertown, N. Y. Filed Sept. 20, 1904. W. S. Doolittle, clerk.

164 Circuit Court of the United States, Northern District of New York.

HIRAM REMINGTON, Plaintiff,
vs.
CENTRAL PACIFIC RAILROAD COMPANY, Defendant.
} At Law. Petition for Writ of Error.

And now comes the above named plaintiff, Hiram Remington, by his attorneys, and says that this cause was commenced in the supreme court of the State of New York in and for Jefferson county; that the defendant filed in said State court a petition and bond for the removal of said cause to this court and a copy of the record in said cause in said State court certified by the clerk of said State court under the seal of said State court was filed in this court on the 4th day of November, 1903; that thereafter the plaintiff duly made a motion upon grounds stated therein for an order of this court remanding said cause to said State court, and the defendant obtained an order in this court requiring the plaintiff to show cause why the service of the summons in this action on the defendant should not be set aside; that thereafter and on the 23rd day of July, 1904, this court made an order in this cause denying plaintiff's said motion to remand said cause to said State court, and on the same day made another order granting the defendant's said motion to set aside the service of said summons on the defendant, and setting aside said summons and said service thereof and declaring the same to be null and void and of no effect; and each of said orders was entered July 25th, 1904; that the plaintiff duly excepted to each of said orders, which exceptions were allowed by the court; that thereafter, during the same term of court at which said two orders were made, and on the 23rd day of August, 1904, judgment was rendered by this court in this cause dismissing
165 the same for want of jurisdiction of the defendant, which judgment was entered on the 30th day of August, 1904; that in this cause the jurisdiction of the court was and is in issue; that the only question arising herein and the only question tried and decided by this court herein was the question of the jurisdiction of the court; that this court in and by said orders and judgment determined and decided in favor of the defendant and against the plaintiff in effect as follows, to wit: that said cause was properly removed from said State court to this court; that the defendant had not waived the right to remove said cause from said State court to this court by reason of the proceedings taken by it in said State court; that the defendant was not estopped from removing said cause from said State court to this court on account of proceedings taken by it in said State court; that the petition and bond for removal were not filed in said State court too late to effect such removal; that said petition and bond were filed in said State court at

the time or before the time the defendant was required by the laws of the State of New York or the rules of the supreme court of the State of New York, in which said suit was brought, to answer or plead to the declaration or complaint of the plaintiff; that it was not necessary to present said petition to said State court in session, but that it was sufficient to present said petition and bond to a justice of said State court at chambers; and that it was unnecessary to obtain any order from said State court or a judge thereof accepting said petition or removing said cause to this court; that the order made by said State court on September 28th, 1903, and entered October 2nd, 1903, denying defendant's motion to set aside the service of the summons on the defendant was not an adjudication that was binding on the defendant or on this court; that this court had power and jurisdiction to review said order of said State court denying the defendant's motion to set aside the service of the summons on the defendant and make an order granting defendant's motion to set aside the service of said summons on the defendant and setting the summons and said service aside and declaring the same to be null and void and of no effect notwithstanding
166 said order of said State court had not been reversed or set aside; that the service of said summons was not a legal and valid service of said summons on the defendant and said summons and said service thereof should be set aside and adjudged to be null and void and of no effect; that the defendant had not made a general appearance in the action and that the court had no jurisdiction of the defendant;

That the plaintiff is aggrieved by the said decisions of this court and by the judgment dismissing this action for want of jurisdiction of the defendant and by said order denying plaintiff's motion to remand this cause to said State court and by said order granting the defendant's motion to set aside the service of the summons on the defendant and setting aside said summons and the service thereof and declaring the same to be null and void and of no effect.

The plaintiff further says that in said order denying plaintiff's said motion to remand said suit to said State court and in said order granting the defendant's said motion to set aside the service of the summons in this action on the defendant and setting aside said summons and the service thereof on the defendant and declaring the same to be null and void and of no effect and in said judgment dismissing said action for want of jurisdiction of the defendant and in the proceedings prior thereto certain errors were committed on the question of the jurisdiction of the court to the prejudice and great damage of this plaintiff, all of which will more in detail appear in the record in this cause and from the assignment of errors which is presented and filed with this petition.

Wherefore, this plaintiff, considering himself aggrieved, prays that a writ of error may be allowed and may issue in this behalf to the Supreme Court of the United States to the end that said orders, rulings, decisions and judgment may be reviewed by the Supreme

Court of the United States upon the question of the jurisdiction of the court thereby determined, and that the errors so complained of may be corrected, and that a transcript of the record, proceedings
167 and papers in this cause duly authenticated may be sent to said Supreme Court of the United States.

Dated this 21st day of September, 1904.

BROWN, CARLISLE & HUGO,
Attorneys for Plaintiff, # 8 Stone Street,
Watertown, New York.

JAMES G. FLANDERS,
FREDERICK H. REMINGTON,
Of Counsel.

The foregoing petition for writ of error was duly presented to me this 14th day of November, 1904, before the allowance of the writ of error to the Supreme Court of the United States in said cause.

GEO. W. RAY,
U. S. Judge.

167½ [Endorsed:] At law. Circuit court of the United States, northern district of New York. Hiram Remington, plaintiff, vs. Central Pacific Railroad Company, defendant. Petition for writ of error. Brown, Carlisle & Hugo, attorneys for plaintiff, # 8 Stone street, Watertown, N. Y. Read Nov. 14, 1904 G. W. R., U. S. J. Filed Nov. 18 1904 W. S. Doolittle, clerk.

168 Circuit Court of the United States, Northern District of New York.

HIRAM REMINGTON, Plaintiff,
vs.
CENTRAL PACIFIC RAILROAD COMPANY, Defendant.
} At Law. Assignment of Errors.

Now comes the above named plaintiff, Hiram Remington, by his counsel, and in connection with his petition for a writ of error to the Supreme Court of the United States assigns errors in the record and proceedings in the above entitled cause as follows:

1. The circuit court of the United States for the northern district of New York erred in making the order dated July 23, 1904, and entered July 25, 1904, denying plaintiff's motion to remand this action to the supreme court of the State of New York in and for Jefferson county.

2. Said circuit court erred in refusing to hold that the defendant waived any right it may have had to remove this suit from said State court to said circuit court by obtaining from said State court an order dated October 24, 1903, and entered October 26, 1903, stay-

ing all proceedings on the part of the plaintiff pending the appeal that had been taken by the defendant to the appellate division of said State court from an order made by said State court dated September 28, 1903, and entered October 2, 1903, denying a motion that had been made by the defendant in said State court to set aside the service of the summons in this action and until ten days after the decision of said appeal, except that the order which had been granted for the examination of the plaintiff on November 2, 1903, should not be stayed.

169 3. Said circuit court erred in refusing to hold that the defendant was estopped from removing this suit from said State court to said circuit court of the United States, by reason of the fact that it had obtained said order staying proceedings.

4. Said circuit court erred in refusing to hold that the defendant did not make and file a petition for the removal of this suit from the supreme court of the State of New York in and for Jefferson county to said circuit court at the time or at any time before the defendant was required by the laws of the State of New York, or the rules of the supreme court of the State of New York, in which such suit was brought, to answer or plead to the declaration or complaint of the plaintiff.

5. Said circuit court erred in refusing to hold that the petition and bond for removal were filed too late to effect a removal of said suit from said State court to the circuit court of the United States for the northern district of New York.

6. Said circuit court erred in refusing to hold that the defendant was in default at the time said petition and bond for removal were filed in said State court.

7. Said circuit court erred in refusing to hold that there was no controversy between the plaintiff and the defendant in this action at the time said petition and bond for removal were filed in said State court.

8. Said circuit court erred in refusing to hold that it was not sufficient to present said petition and bond to a judge of said State court at chambers.

9. Said circuit court erred in refusing to hold that said petition and bond for removal should have been presented to said State court in session.

10. Said circuit court erred in refusing to hold that the said petition and bond for removal, not having been presented to said

170 State court in session were insufficient to effect a removal of this suit to said circuit court of the United States.

11. Said circuit court erred in refusing to hold that because no order accepting said petition and bond or for the removal of said suit was made, this suit was not removed from said State court to said circuit court of the United States.

12. Said circuit court erred in granting the defendant's motion to set aside the service of the summons on the defendant in this action.

13. Said circuit court erred in making the order dated July 23rd, 1904, and entered July 25, 1904. that the summons in this action and the service thereof on the defendant be and is in all respects set aside and declared to be null and void and of no effect.

14. Said circuit court erred in rendering judgment in this action dismissing this action for want of jurisdiction of the defendant, which judgment was rendered on the 23rd day of August, 1904, and was entered on the 30th day of August, 1904.

15. Said circuit court erred in refusing to hold that the order of said State court, made in this action on September 28, 1903, and entered October 2, 1903, denying defendant's motion to set aside the service of the summons in this action on the defendant was an adjudication that was binding upon the defendant and upon said circuit court of the United States.

16. Said circuit court erred in reviewing said order of said State court denying defendant's motion to set aside the service of the summons in this action on the defendant.

17. Said circuit court erred in refusing to hold that the defendant had made a general appearance in this action by obtaining from the plaintiff's attorneys on the 22nd day of April, 1903, a stipulation in writing in this action giving the defendant twenty days ad-
171 ditional time in which to appear generally or specially in said action or for the purpose of moving to vacate the service of summons in said action.

18. Said circuit court erred in refusing to hold that the defendant made a general appearance in this action by serving on the plaintiff's attorneys on the 11th day of May, 1903, a notice of motion to be heard in said State court on the 16th day of May, 1903, for an order setting aside the service of the summons in said action on the ground that such service was irregular, defective, null and void and of no effect, or for such other or further order as may be proper with costs of motion.

19. Said circuit court erred in refusing to hold that the defendant made a general appearance in this action by procuring from the plaintiff's attorneys on the 23rd day of May, 1903, a stipulation in writing in this action giving the defendant ten days' time after the hearing and decision of the plaintiff's motion to set aside the service of the summons in the action to appear generally, and providing the said stipulation should not in any way affect any of plaintiff's rights on account of any prior appearance in said action, or be deemed a waiver of any of plaintiff's rights in said action.

20. Said circuit court erred in refusing to hold that the defendant made a general appearance in said action by serving on the plaintiff's attorneys on the 16th day of October, 1903, a notice of motion, to be heard at a special term of said State court on the 24th day of October, 1903, for an order staying all proceedings on the part of the plaintiff, respondent, under the order entered in said action on the 2nd day of October, 1903, until the decision of the appellate division of said State court, fourth department, upon the appeal

taken from said order by the defendant, appellant, or for such other relief as may be just.

21. Said circuit court erred in refusing to hold that the defendant made a general appearance in said action by obtaining in said action, at a special term of said State court, on the 24th day
172 of October, 1903, the following order: "Ordered that the defendant be relieved from any default in appearing herein and that all proceedings on the part of the plaintiff be stayed pending said appeal (the appeal that had been taken by the defendant to the appellate division of said State court, fourth department, from the order denying defendant's motion to set aside the service of the summons in said action) and until ten days after the decision thereof, except that this order shall not stay the order for the examination of the plaintiff herein granted by Hon. E. C. Emerson, county judge of Jefferson county, and entered in the county clerk's office of said county October 19th, 1903" and by causing said order dated October 24, 1903, to be entered in the office of the county clerk of Jefferson county on the 26th day of October, 1903.

22. Said circuit court erred in refusing to hold that the defendant made a general appearance in this action by obtaining from a judge of said circuit court on November 5, 1903, after a copy of the record in this action was filed in said circuit court, an order to show cause which contained the following: "Ordered that the time of the defendant to enter a general appearance in this suit be and the same is hereby extended until twenty days after the final determination of the motion arising upon this order to show cause," and by serving said order on plaintiff's attorneys on November 6th, 1903, and by filing said order in the office of the clerk of said circuit court.

And the said plaintiff, Hiram Remington, prays that the orders and judgment aforesaid made and rendered by said circuit court of the United States may be reversed, annulled and altogether held for nought, and that this cause may be remanded to the supreme court of the State of New York in and for Jefferson county, and that the plaintiff may be restored to all things which he hath lost by occasion of said orders and judgment.

Dated September 21st, 1904.

BROWN, CARLISLE & HUGO,
Attorneys for Plaintiff,
8 *Stone Street, Watertown, New York.*
JAMES G. FLANDERS,
FREDERICK H. REMINGTON,
Of Counsel for Plaintiff.

173 The foregoing assignments of error were duly presented to me this 14 day of November, 1904, before the allowance of the writ of error to the Supreme Court of the United States in said cause.

GEO. W. RAY,
U. S. District Judge.

173½ [Endorsed:] Law 3441. Circuit court of the United States, northern district of New York. Hiram Remington, plaintiff, *vs.* Central Pacific Railroad Company, defendant. Assignment of errors. Brown, Carlisle & Hugo, plaintiff's attorneys, # 8 Stone street, Watertown, New York. G. W. R., U. S. J. Filed Nov. 18, 1904, W. S. Doolittle, clerk.

174 In Supreme Court of the United States.

HIRAM REMINGTON, Plaintiff in Error,
vs.
CENTRAL PACIFIC RAILROAD COMPANY, Defendant in Error.

Know all men by these presents that we, Hiram Remington, of the city of Watertown, New York, as principal, and Fred Waddingham and H. A. Nims, of the city of Watertown, Jefferson county, New York, as sureties, are held and firmly bound unto Central Pacific Railroad Company, its successors and assigns, in the sum of five hundred dollars ($500), to be paid to said Central Pacific Railroad Company, its successors and assigns; for which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors and administrators, firmly by these presents.

Sealed with our seals and dated and executed this 10th day of September, A. D. 1904.

Whereas, the above named Hiram Remington, plaintiff in error, hath prosecuted a writ of error to the Supreme Court of the United States to reverse the orders and judgment rendered in the above entitled action by the circuit court of the United States for the northern district of New York:

Now therefore, the condition of this obligation is such that if the above named Hiram Remington shall prosecute his said writ of error to effect, and answer all damages and costs if he fail to make his plea good, then this obligation shall be void; otherwise
175 the same shall be and remain in full force and virtue.

HIRAM REMINGTON. [SEAL.]
FRED WADDINGHAM. [SEAL.]
H. A. NIMS. [SEAL.]

Signed, sealed & delivered in presence of
S. G. ADZIT.
JOHN H. COON.

UNITED STATES OF AMERICA,
Northern District of New York, State of New York, } *ss:*
County of Jefferson,

On this 10th day of September, A. D. 1904, personally appeared before me Fred Waddingham and H. A. Nims, who signed the

above and foregoing bond, and being each duly sworn doth each for himself depose and say that he is a resident of the city of Watertown, Jefferson county, in the State of New York, and is worth the sum of one thousand dollars over and above all his debts, and exclusive of property exempt from execution.

FRED WADDINGHAM.
H. A. NIMS.

Subscribed and sworn to before me this 10th day of September, A. D. 1904.

[NOTARIAL SEAL.] GEO. B. KEMP,
Notary Public, Jefferson County, New York.

I approve the foregoing bond as to form and sufficiency of sureties, and accept the same as good and sufficient security upon the writ of error in the foregoing entitled cause.

Dated November 15, 1904.

GEO. W. RAY, *U. S. Judge.*

175½ [Endorsed:] Law 3441. In Supreme Court of the United States Hiram Remington, plaintiff in error, *vs.* Central Pacific Railroad Company, defendant in error. Bond on writ of error. Brown, Carlisle & Hugo, plaintiff's attorneys, # 8 Stone street, Watertown, New York. Filed Nov. 18, 1904. W. S. Doolittle, clerk.

176 Circuit Court of the United States, Northern District of New York.

HIRAM REMINGTON, Plaintiff,
vs.
CENTRAL PACIFIC RAILROAD COMPANY, Defendant.
} At Law. Order Allowing Writ of Error.

An order having been made by this court the 23rd day of July, 1904, denying the plaintiff's motion to remand this action to the supreme court of the State of New York in and for Jefferson county, and this court on the 23rd day of July, 1904, having made an order granting defendant's motion to set aside the service of the summons in said action on the defendant and setting aside said summons and the service thereof on the defendant, and declaring the same to be null and void and of no effect; said two orders having been entered on July 25th, 1904; and final judgment dismissing said action for want of jurisdiction of the defendant having been rendered by this court on the 23rd day of August, 1904, and entered on the 30th day of August, 1904; and the plaintiff on the 20th day of September, 1904, during the same term at which said orders and judgment were rendered and entered, having filed his bill of exceptions in said action; and the above named plaintiff, considering himself aggrieved

by the rulings of this court upon the question of the jurisdiction of the court in said action, having on this day during said term of court presented his assignment of errors and his petition praying for a writ of error from said judgment and orders to the Supreme Court of the United States to review said orders, judgment, rulings and decisions of this court upon said question of jurisdiction, and praying that said writ of error be allowed him to the said Supreme Court of the United States, and that a full transcript of the
177 record and proceedings in said cause duly authenticated be sent to said Supreme Court of the United States; and the jurisdiction of the court being in issue in this case; and the only question arising in said action and the only question tried and decided by this court therein being the question of the jurisdiction of the court; and a bond for said writ of error in the penalty of five hundred dollars having been duly executed and having been approved by the court:

Now, on reading and filing said petition, assignment of errors and bond, and during the same term of court at which said orders were made and entered and said judgment was rendered and entered; and on motion of Brown, Carlisle & Hugo, plaintiff's attorneys,

It is ordered and considered by the court that said writ of error to the Supreme Court of the United States, from said orders and said final judgment dismissing said suit for want of jurisdiction of the defendant, be and the same is hereby allowed and awarded upon said petition of the plaintiff, solely upon the question of the jurisdiction of the court as prayed for in said petition, to review the question of jurisdiction of the court in said petition mentioned, which is the only question arising herein.

Enter.

BY THE COURT.

Dated the 15 day of November, 1904.

GEO. W. RAY,
U. S. Judge.

177½ [Endorsed:] 3441 Circuit court of the United States, northern district of New York. Hiram Remington, plaintiff, vs. Central Pacific Railroad Company, defendant. Order allowing writ of error. Brown, Carlisle & Hugo, plaintiff's attorneys, 48 Stone street, Watertown, New York. Filed Nov. 18, 1904. W. S. Doolittle, clerk.

178 UNITED STATES OF AMERICA,
Northern District of New York, } ss:

I, William S. Doolittle, clerk of the circuit court of the United States of America, for the northern district of New York, by virtue of the writ of error hereto annexed and in obedience thereto, do hereby certify that I have compared the writings, annexed to this

certificate, to-wit: the record on removal, certified by the county clerk of Jefferson county, State of New York, the supplemental record on removal, certified by said county clerk, the order to show cause and the affidavit of J. C. Stubbs, thereto annexed, the order denying motion to remand, the order granting motion to set aside the service of the summons, the judgment, the bill of exceptions, the petition for writ of error, the assignment of errors, the bond on writ of error and the order allowing writ of error, with the originals now on file and of record in my office, and that the same are a true and correct copy of such originals and are a true and complete transcript of the record and all proceedings had in said court in the cause of Hiram Remington, plaintiff in error, against Central Pacific Railroad Company, defendant in error, with all things concerning the same, as the same remain of record and on file in said office.

I further certify that the original writ of error and the original citation issued in said cause, with proof of service thereof, are hereto annexed and are herewith returned, together with said transcript of the record, to the Supreme Court of the United States.

In testimony whereof, I have hereunto set my hand, and duly affixed the seal of the said court at the city of Utica, in said district, this third day of December in the year of Lord one thousand nine hundred and four, and of the Independence of the United States, the one hundred and twenty-ninth.

[Seal of the U. S. Circuit Court, Northern District N. Y.]

W. S. DOOLITTLE, *Clerk*.

179 Supreme Court of the United States.

HIRAM REMINGTON, Plaintiff in Error,
vs.
CENTRAL PACIFIC RAILROAD COMPANY, Defendant in Error.

UNITED STATES OF AMERICA,
Northern District of New York, Jefferson County, } ss:

George S. McCartin, being first duly sworn on oath deposes and says that he is more than twenty-one years of age; that on the 23d day of November, A. D. 1904, he personally served the annexed citation, wherein Hiram Remington is named as plaintiff in error and Central Pacific Railroad Company is named as defendant in error, upon Purcell, Walker & Burns, who are the attorneys for Central Pacific Railroad Company, said defendant in error, by delivering to and leaving with Henry Purcell, a member of said firm of Purcell, Walker & Burns, a true copy of said citation, at the law office of Purcell, Walker & Burns in the city of Watertown, Jefferson county, State of New York, and that at the same time and place he personally served the writ of error mentioned in said citation, on said Purcell, Walker & Burns, attorneys for said defendant in error,

by delivering to and leaving with said Henry Purcell a certified copy of said writ of error, certified by the clerk of the circuit court of the United States for the northern district of New York, under the seal of said court, to be a correct transcript of said writ; and that at the time he served said papers as aforesaid he knew said Henry Purcell to be a member of said firm of Purcell, Walker &
180 Burns; that said Purcell, Walker & Burns are the same persons who were the attorneys and are mentioned as the attorneys, for said Central Pacific Railroad Company, the said defendant in error, in the record, proceedings and judgment in said citation and said writ of error mentioned, and they are still the attorneys for said Central Pacific Railroad Company in the action in which said judgment was rendered.

GEORGE S. McCARTIN.

Subscribed and sworn to before me this 23 day of November, 1904.

{Seal of Floyd L. Carlisle, Notary Public, Watertown, Jefferson Co., N. Y.}

FLOYD L. CARLISLE,
Notary Public, Jefferson County, New York.

STATE OF NEW YORK, }
County of Jefferson, } ss:

I, E. A. Chapman, clerk of the county of Jefferson, and clerk of the supreme and county courts, which are courts of record in and for said county do hereby certify: That Floyd L. Carlisle, Esq., whose name is subscribed to the certificate of proof or acknowledgement of the annexed instrument and thereon written, was, at the time of taking such proof or acknowledgement a notary public in and for said county, residing in the said county, duly authorized to take the same; that I am well acquainted with the handwriting of said notary public and verily believe that the signature to said certificate of proof or acknowledgement is genuine; and that said instrument is executed and acknowledged according to the laws of the State.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said county and courts thereof, at Watertown, N. Y., this 23d day of November 1904.

[Seal Jefferson County.]

E. A. CHAPMAN, *Clerk,*
By P. A. PILCHER,
Deputy Clerk.

181 UNITED STATES OF AMERICA, *ss*:

To the Central Pacific Railroad Company, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, in the District of Columbia, on the 15th day of December, 1904, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of New York, wherein Hiram Remington is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error in said writ of error mentioned should not be corrected, and why the errors in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable George W. Ray, judge of the circuit court of the United States for the northern district of New York, at Norwich, New York, in said district, this 15th day of November, in the year of our Lord, one thousand nine hundred and four.

GEO. W. RAY,
Judge of the Circuit Court of the United States
for the Northern District of New York.

182 [Endorsed:] Supreme Court of the United States. Hiram Remington, pl'ff in error, *vs.* Central Pacific Railroad Company, def't in error. Citation. Brown, Carlisle & Hugo, att'ys for plaintiff in error, # 8 Stone St., Watertown, New York. Filed Dec. 2, 1904. W. S. Doolittle, clerk.

183 [Endorsed:] United States Supreme Court. Hiram Remington, pl'ff in error, *vs.* Central Pacific Railroad Company, def't in error. Return to writ of error.

Endorsed on cover: File No. 19,560. N. New York C. C. U. S. Term No. 460. Hiram Remington, plaintiff in error, *vs.* Central Pacific Railroad Company. Filed December 12th, 1904. File No. 19,560.